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No. 49]

NEW DELHI, SATURDAY, DECEMBER 3, 1988/AGRAHAYANA 12, 1910

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए स्तरीयधिक आदेश और अधिसूचनाएं
Ministries of the Government of India (other than Statutory Orders and Notifications issued by the

विधि एवं न्याय मंत्रालय

(विधि कार्य विभाग)

नई दिल्ली, 26 अक्टूबर, 1988

सूचनाएं

का. प्रा. 3532.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री जय गोपाल सूरि ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे दिल्ली में व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए। उक्त व्यक्ति नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए।

[नं. 5(36)/88-न्या.]

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

New Delhi, the 26th October, 1988

NOTICES

S.O. 3532.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956 that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Jai Gopal Suri for appointment as Notary to practise in Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(36)/88-Judl.]

नई दिल्ली, 4 नवम्बर, 1988

का. प्रा. 3533.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि कुमारी मिथलेश अग्रवाल ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे दिल्ली में व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए।

2. उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए।

[नं. 5(35)/88-न्या.]

New Delhi, the 4th November, 1988

S.O. 3533.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956 that application has been made to the said Authority, under rule 4 of the said Rules, by Miss Mithlesh Agarwal for appointment as a Notary to practise in Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(35)/88-Judl.]

का. घा. 3534.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री त्रिलोकी नाथ कपूर ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे केन्द्र शासित प्रदेश दिल्ली व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए।

2. उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए।

[सं. 5(33)/88-न्या.]

S.O. 3534.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956 that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Triloki Nath Kapoor for appointment as a Notary to practise in Union Territory of Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(33)/88-Judl.]

नई दिल्ली, 7 नवम्बर, 1988.

का. घा. 3455.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री अविनाश कौर एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे नई दिल्ली और नोयडा में व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए।

2. उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए।

[सं. 5(37)/88-न्या.]

New Delhi, the 7th November, 1988

S.O. 3535.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956 that application has been made to the said Authority, under rule 4 of the said Rules, by Avinash Kaur, Advocate for appointment as a Notary to practise in New Delhi and NOIDA.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(37)/88-Judl.]

नई दिल्ली, 8 नवम्बर, 1988

का. घा. 3536.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्रीमती उषा अग्रवाल ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के

अधीन एक आवेदन इस बात के लिए दिया है कि उसे जयपुर में व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए।

2. उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए।

[सं. 5(38)/88-न्या.]

के. डी. सिंह, सक्षम प्राधिकारी

New Delhi, the 8th November, 1988

S.O. 3536.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956 that application has been made to the said Authority, under rule 4 of the said Rules, by Mrs. Usha Agarwal for appointment as a Notary to practise in Ajmer.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(38)/88-Judl.]

K. D. SINGH, Competent Authority

(विधायी विभाग)

नई दिल्ली, 18 नवम्बर, 1988

शुद्धि-पत्र

का. घा. 3537.—विधि और न्याय मंत्रालय विधायी विभाग की, 3 अप्रैल, 1988 के भारत के राजपत्र, असाधारण भाग 11, खण्ड 3, उप-खण्ड (ii) में प्रकाशित अधिसूचना संख्या का. घा. 363 (घ), दिनांक 3 अप्रैल, 1988 में, राजपत्र के पृष्ठ 3 पर, घोषणा संख्या 5 में, हिमाचल प्रदेश से निर्वाचित सदस्य के नाम और पते में अंतिम पंक्ति "हिमाचल प्रदेश" के नीचे और पंक्ति "उस सदन में उस सदस्य के....." के शब्दों के ऊपर, एक नई पंक्ति,—

"जो इंडियन नेशनल कांग्रेस द्वारा चुने किए गए हैं," को स्थापित किया जाए।

[फ. सं. 13(1)/88-विधायी-II]

श्रीमती वनजा एन. सारना,

अवर सचिव

(Legislative Department)

CORRIGENDUM

New Delhi, the 18th November, 1988.

S.O. 3537.—In the Ministry of Law and Justice, Legislative Department's Notification No. S.O. 363(E) dated 3rd April, 1988, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), dated the 3rd April, 1988, on page 7 of the Gazette,—

(i) in declaration (3) of the notification .—

for "Solanki Madhavsinh Fulsinh", read "Solanki Madhavsinh Fulsinh," and

(ii) in declaration (5) of the Notification, under the name and address of the elected member, below the words "Himachal Pradesh", and above the line starting with the words "having been duly elected..

"sponsored by Indian National Congress".

[F. No. 13(1)/88-Leg. II]

SMT. VANAJA N. SARNA, Under Secy.

CORRIGENDUM

S.O. 3538.—In the Ministry of Law and Justice, Legislative, Department's Notification No. S.O. 364(E), dated the 3rd April, 1988, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) dated the 3rd April, 1988, on page 3 of the Gazette at Sl. No. 18 under the State of Gujarat, for the Name of the Member—

for "Shri Solanki Madhavsinh Fulsinh" read "Shri Solanki Madhavsinh Fulsinh".

[F. No. 13(1)/88-Leg.II]

Smt. VANJA N. SARNA, Under Secy.

बिस्व संस्थान

(राजस्व विभाग)

नई दिल्ली, 18 नवम्बर, 1988

आदेश

स्टाम्प

का. प्र. 3539.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ब) द्वारा प्रस्तुत शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा बि. ग्रामोफोन कम्पनी प्रा. लि., कलकत्ता को मात्र तीन लाख चौबीस हजार सात सौ पचास रुपये के इस समेकित स्टाम्प शुल्क को अदायगी करने की अनुमति देती है, जो उक्त कम्पनी द्वारा जारी किए जाने वाले चार करोड़ तीस लाख रुपये के अंकित मूल्य के सौ-सौ रु. के 433000, 15% आरक्षित निमोचन असम्परिवर्तनीय ऋणपत्रों पर स्टाम्प ड्यूटी के कारण प्रसार्य है।

[सं. 43/88-स्टाम्प-फा. सं. 33/66/88-वि. क.]

बी. आर. मेहमी, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 18th November, 1988

ORDER

STAMPS

S.O. 3539.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899, (2 of 1899), the Central Government hereby permits the The Gramophone Company of India Ltd., Calcutta to pay consolidated stamp duty of rupees three lakhs twenty four thousand seven hundred and fifty only, chargeable on account of the stamp duty on 433000, 15 percent Secured Redeemable Non-convertible Debentures of Rs. 100 each of the face value of rupees four crores thirty three lakhs only to be issued by the said company.

[No. 43/88-Stamp—F. No. 33/66/88-ST,

B. R. MEHMI, Under Secy.

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 30 सितम्बर, 1988

आयकर

का. प्र. 3540.—इन कार्यालय की दिनांक 7-6-85 की अधिसूचना सं. 6255 (फा. सं. 203/213/83-आ.क.नि-II) के क्रम में यह अधि-

सूचित किया जाता है कि केन्द्रीय प्रत्यक्ष कर बोर्ड द्वारा दिम्नलिखित कंपनी को आयकर अधिनियम, 1961 की धारा 35B की उपधारा (2) के खंड (क) में दल्लिखित व्यवहार्यता रिपोर्ट अथवा परियोजना रिपोर्ट तैयार करने अथवा बाजार सर्वेक्षण अथवा कीर्द अन्य सर्वेक्षण करने अथवा इंजीनियरी सेवाओं से संबंधित कार्य के प्रयोजनों के लिए अनुमोदित किया जाता है :—

कंपनी

मैसर्स मेरजी, ईस्टर्न लि., नेविलो हाउस,
नं. एन. हेरेदिया मार्ग, बॉम्बे एस्टेट,
बम्बई-400038

यह अनुमोदन 1-4-1986 से 31-3-1989 तक के लिए प्रभावी

[सं. 8111 (फा. सं. 203/216/87-आ.क.नि-II)]

रोशन साहाय, अवर सचिव

(Central Board of Direct Taxes)

New Delhi, the 30th September, 1988

INCOME TAX

S.O. 3540.—In continuation of this Office Notification No. 6255 (F. No. 203/213/83-ITA.II) dated 7-6-1985, it is hereby notified for general information that the concern mentioned below has been approved by Central Board of Direct Taxes for the purposes of carrying out the work in connection with the preparation of the feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services referred to in clause (a) of sub-section (2) of Section 350 of the Income-tax Act, 1961.

Concern

M/s. Ghezzi Eastern Ltd., Neville House, J. N. Heredia Marg, Ballard Estate, Bombay-400038.

This approval is effective from 1-4-86 to 31-3-89.

[No. 8111 (F. No. 203/216/87-ITA.II)]

ROSHAN SAHAY, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 27 सितम्बर, 1988

का. प्र. 3541.—प्रदेशीय ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 11 की उपधारा (2) द्वारा प्रस्तुत शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री. ए. पी. त्रिपाठी को जिनकी धारा 11 की उपधारा (1) के तहत सीवान क्षेत्रीय ग्रामीण बैंक सीवान के अध्यक्ष के रूप में नियुक्ति की तीन वर्ष की पहली अवधि 31-7-87 की समाप्त हो गयी है, 1-8-87 से प्रारंभ होकर 28-9-88 की समाप्त होने वाली अवधि के लिये उक्त बैंक का पुनः अध्यक्ष नियुक्त करती है।

[सं. एक. 2-54/87-आ.प्र.आ.बी.]

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 27th September, 1988

S.O. 3541.—In exercise of the powers conferred by sub-section (2) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby reappoints Shri A. P. Tripathi whose earlier tenure of three

years appointments under sub-section (1) of section 11 had expired on 31-7-87 as the Chairman of Siwan Kshetriya Gramin Bank, Siwan for a further period commencing from 1-8-87 and ending with 28-9-88.

[No. F. 2-54/87-RRB]

का. प्रा. 3542.—प्रादेशिक ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 11 की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा श्री टी. प्रार. वर्मा को सीवान क्षेत्रीय ग्रामीण बैंक में, उनके पद ग्रहण करने की तारीख से तीन साल की अवधि के लिए, सीवान क्षेत्रीय ग्रामीण बैंक का अध्यक्ष नियुक्त करती है।

[संख्या एक, 2-54/87-प्रार. प्रार. बी.]

S.O. 3542.—In exercise of the powers conferred by sub-section (2) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Shri T. R. Verma as the Chairman of the Siwan Kshetriya Gramin Bank, Siwan for a term of three years with effect from the date he takes over as Chairman, Siwan Kshetriya Gramin Bank.

[No. F. 2-54/87-RRB]

का. प्रा. 3543.—प्रादेशिक ग्रामीण बैंक अधिनियम 1976 (1976 का 21) की धारा 11 की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा डा. पी. एन. चौधरी को कटक ग्राम्य बैंक, कटक में उनके पद ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए, कटक ग्राम्य बैंक का अध्यक्ष नियुक्त करती है।

[संख्या एक-2-10/88-प्रार. प्रार. बी.]

S.O. 3543.—In exercise of the powers conferred by sub-section (2) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Dr. P. N. Choudhury as the Chairman of the Cuttack Gramya Bank, Cuttack for a term of three years with effect from the date he takes over as Chairman, Cuttack Gramya Bank.

[No. F. 2-10/88-RRB]

का. प्रा. 3544.—प्रादेशिक ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 11 की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा श्री प्रार. जे. देसाई को हुनारपुर बांसवाड़ा क्षेत्रीय ग्रामीण बैंक, हुनारपुर में, उनके पद ग्रहण करने की तारीख से तीन साल की अवधि के लिए हुनारपुर बांसवाड़ा क्षेत्रीय ग्रामीण बैंक का अध्यक्ष नियुक्त करती है।

[संख्या एक-2-33/88-प्रार. प्रार. बी.]

बी. बी. माथुर, प्रवर सचिव

S.O. 3544.—In exercise of the powers conferred by sub-section (2) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Shri R. J. Desai as the Chairman of the Dungarpur Banaswara Kshetriya Gramin Bank, Dungarpur for a term of three years with effect from the date he takes over as Chairman, Dungarpur Banaswara Kshetriya Gramin Bank.

[No. F. 2-33/88-RRB]

V. B. MATHUR, Under Secy.

नई दिल्ली, 10 नवम्बर, 1988

का. प्रा. 3545.—राष्ट्रीय कृषि और ग्रामीण विकास बैंक अधिनियम, 1981 (1981 का 61) की धारा 6 की उपधारा (1) के खंड (ख)

के अनुसरण में केन्द्रीय सरकार भारतीय रिजर्व बैंक के परामर्श से एतद्वारा श्री महेंद्र मोहन मिश्र, भुवनेश्वर, भवन, क्लब रोड, रामवा, मुजफ्फरपुर (बिहार) को डा. कमला चौधरी के स्थान पर 15 नवम्बर, 1988 से प्रारम्भ होकर 14 नवम्बर, 1991 को समाप्त होने वाली 3 वर्ष की अवधि के लिए राष्ट्रीय कृषि और ग्रामीण विकास बैंक का निदेशक नियुक्त करती है।

[सं. एक, 7/1/86-बीओ I]

एस.एस. हसूरकर, निदेशक

New Delhi, the 10th November, 1988

S.O. 3545.—In pursuance of clause (b) of sub-section (1) of section 6 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981), the Central Government, in consultation with the Reserve Bank of India, hereby appoints Shri Mahendra Mohan Mishra, Bhubenshwar Bhavan, Club Road, Ramna, Muzaffarpur (Bihar), as a Director on the Board of National Bank for Agriculture and Rural Development for a period of three years commencing on 15th November, 1988, an ending with 4th November, 1991 vice Dr. Kamla Chowdhury.

[No. F. 7/1/86-BO.I]

S. S. HASURKAR, Director

नई दिल्ली, 15 नवम्बर, 1988

का. प्रा. 3546.—भारतीय निर्यात आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उपधारा (1) के खण्ड (क) के उपखण्ड (1) के अनुसरण में केन्द्रीय सरकार एतद्वारा श्री नितिन देसाई, मुख्य आर्थिक सलाहकार, वित्त मंत्रालय, आर्थिक कार्य विभाग, नई दिल्ली को डा. बिसम जालान के स्थान पर भारतीय निर्यात आयात बैंक के निदेशक मण्डल में निदेशक के रूप में मनोनीत करती है।

[संख्या एक, 9/11/88-बीओ-I]

New Delhi, the 15th November, 1988

S.O. 3546.—In pursuance of sub-clause (i) of clause (c) of sub-section (1) of section 6 of Export-Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Shri Nitin Desai, Chief Economic Advisor, Ministry of Finance, Department of Economic Affairs, New Delhi as a Director of the Board of Directors of the Export-Import Bank of India vice Dr. Bimla Jalan.

[No. F. 9/11/88-BO.I]

का. प्रा. 3547.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उपधारा (1) के खण्ड (क) के उपखण्ड (11) के अनुसरण में केन्द्रीय सरकार एतद्वारा श्री के. मनमोहन शेनोई, अध्यक्ष एवं प्रबंध निदेशक, यूको बैंक, कलकत्ता को भारतीय निर्यात आयात बैंक में निदेशक मण्डल में निदेशक के रूप में मनोनीत करती है।

[संख्या एक, 7/5/88-बीओ-I]

एम. एस. सीथारामन, प्रवर सचिव

S.O. 3547.—In pursuance of sub-clause (ii) of clause (c) of sub-section (1) of section 6 of the Export-Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Shri K. Manmohan Shenoai, Chairman and Managing Director, UCO Bank, Calcutta, as a Director of the Board of Directors of the Export-Import Bank of India.

[F. No. 7/5/88-BO.I]

M. S. SEETHARAMAN, Under Secy.

वाणिज्य मंत्रालय

(मुख्य निर्यातक, आयात-निर्यात का कार्यालय)

(एग. एल. सेक्शन)

नई दिल्ली, 16 नवम्बर, 1988

का. आ. 3548:—उत्तर प्रदेश सरकार राज्य सिविल विमानन विभाग, लखनऊ को एक बीच क्राफ्ट सुपर किंग एयर बी-300 एयरक्राफ्ट (एवियोनिक्स और वैकल्पिक उपकरणों सहित) के आयात के लिए जारी होने की तिथि से 18 माह के लिए और 4,29,61,665/—रुपये (30,39,538 अमरीकी डॉलर) मूल्य का एक आयात लाईसेंस संख्या जी/एफ/1504947/सी/XX/10/एच/88 एम. एल. एम. दिनांक 11-10-88 जारी किया गया था।

राज्य सरकार ने अब उपर्युक्त लाईसेंस की अनुलिपि जारी करने के लिए इस आधार पर आवेदन किया है कि लाईसेंस की मूल प्रति उन्हें प्राप्त नहीं हुई है। चूंकि लाईसेंस की मूल प्रति पार्टी को प्राप्त नहीं हुई है इसलिए उसे किसी भी सीमाशुल्क कार्यालय में पंजीकृत नहीं कराया गया है।

में संतुष्ट हूँ कि आयात लाईसेंस संख्या जी/एफ/1504947 दिनांक 11-10-88 की मूल प्रति लौट गयी है। समय-समय पर यथा-संशोधित आयात (नियंत्रण) आदेश 1955 दिनांक 7-12-1955 की उप-धारा 9 (ग ग) द्वारा प्रदत्त अधिकारों का प्रयोग करते हुए राज्य सरकार को जारी उक्त मूल लाईसेंस सं. जी/एफ/1504947 दिनांक 11-10-88 को एतद्वारा रद्द किया जाता है।

उक्त लाईसेंस की अनुलिपि प्रति प्रलग से जारी की जा रही है।

[का. सं. 13/17/86-87 एम. एल. एम./666]

एन. एस. कृष्णामूर्ति,

उप मुख्य निर्यातक, आयात-निर्यात
होते मुख्य निर्यातक, आयात-निर्यात

MINISTRY OF COMMERCE

(Office of the Chief Controller of Imports & Exports)

(M. L. SECTION)

New Delhi, the 16th November, 1988

S.O. 3548.—The Govt. of Uttar Pradesh, Dte. of State Civil Aviation Deptt., Lucknow was issued an Import Licence No. G/F/1504947/C/XX/10/H/88/MLS dated 11-10-88 for import of One No. Beechcraft Super King Air B-300 Aircraft complete with avionics and optional equipments valued at Rs. 4,29,61,665 (US\$. 30,39,538) with a validity of 18 months from the date of issue.

Now the State Government have applied for grant of Duplicate import licence on the ground that the original licence has not been received by them. Since the licence has not been received by the party the same has not been registered with any Customs House.

I am satisfied that the original Licence No. G/F/1504947 dated 11-10-88 has been lost. In exercise of powers conferred under sub-clause 9(cc) of the Import (Control) Order, 1955, dated 7-12-1955 as amended from time to time, the said original licence No. G/F/1504947 dated 11-10-88 issued to the State Government is hereby cancelled.

A duplicate copy of the licence is being issued to the party separately.

[File No. 13/17/86-87/MLS/666]

N. S. KRISHNAMURTHY,

Dy. Chief Controller of Imports & Exports

For Chief Controller of Imports & Exports

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 15 नवम्बर, 1988

का. आ. 3549:—भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खंड (ख) के उपबन्ध के अनुसरण में डा. किरपाल कौर को 27 मार्च, 1990 तक की अवधि के लिए गुरु नानक देव विश्वविद्यालय अमृतसर की सीनेट द्वारा निर्वाचित किया गया है।

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 3 की उपधारा (1) के अनुसरण में भारत सरकार के अतुल्य स्वास्थ्य मंत्रालय की अधिसूचना सं. का. आ. 138 (सं. 5-13/59 एम आर्), तारीख 9 जनवरी, 1960 का निम्नलिखित और संशोधन करती है, अर्थात्—

उक्त अधिसूचना में “धारा 3 की उपधारा (1) के खण्ड (ख) के अधीन निर्वाचित” शब्दों के नीचे क्रम सं. 45 और उससे संबंधित प्रविष्टि के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टि रखी जाएगी अर्थात्—

“डा. किरपाल कौर,

संकायाध्यक्ष, आयुर्विज्ञान संकाय और

प्रधानाचार्य, आयुर्विज्ञान महाविद्यालय,

अमृतसर।”

[संख्या बी. 11013/14/88 एम ई (पी)]

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 15th November, 1988

S.O. 3549.—Whereas in pursuance of the provision of clause (b) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956), Dr. Kirpal Kaur has been elected by the Senate of Gurm Nanak Dev University, Amritsar for the period upto the 27th March, 1990.

Now, therefore, in pursuance of sub-section (1) of section 3 of the said Act, the Central Government hereby makes the following further amendment in the notification of the Govt. of India in the late Ministry of Health, No. S.O. 138 (No. 5-13/59-MI), dated the 9th January, 1960, namely:—

In the said notification, under the heading “Elected under clause (b) of sub-section (1) of section 3” for serial number 45 and the entry relating thereto the following serial number and entry shall be substituted, namely:—

“45 Dr. Kirpal Kaur,
Dean, Faculty of Medical Sciences and,
Principal, Medical College,
Amritsar.”

[No. V-11013/14/88-ME(P)]

का. आ. 3550:—केन्द्रीय सरकार, भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारतीय आयुर्विज्ञान परिषद से परामर्श करते के पश्चात् उक्त अधिनियम की पहली अनुसूची का निम्नलिखित और संशोधन करती है, अर्थात्—

उक्त अनुसूची में भोपाल विश्वविद्यालय से संबंधित प्रविष्टियों के पश्चात् निम्नलिखित प्रविष्टियाँ अन्तः स्थापित की जाएगी, अर्थात्—

“डाक्टर आर्क (मेडिकल सामाजिक और निवारक औषध)

-----एम. डी. मासा. और निवा. औ)

टिप्पण: उपर्युक्त अर्हता, मान्यता प्राप्त वैकिसीय अर्हता तथा होगी, जब गांधी मेडिकल कॉलेज, भोपाल में प्रशिक्षित विद्यार्थियों की भोपाल विश्वविद्यालय द्वारा अनुसूची की गई होगी।

[सं. बी. 11015/47/88-एम.ई. (पी)]

S.O. 3550.—In exercise of the powers conferred by sub-section (2) of Section 11 of the Indian Medical Council Act, 1956 (102 of 1956) the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule, after the entries relating to the Bhopal University, the following entries shall be inserted, namely :—

"Doctor of Medicine (Social & Preventive Medicine)
.....M.D. (Soc. & Prev. Med.).

NOTE.—The above qualification shall be recognised medical qualification when granted by the Bhopal University to the students trained at Gandhi Medical College, Bhopal."

[No. V-11015/47/88-MP(P)]

का. आ. 3551.—केन्द्रीय सरकार, भारतीय आयुर्विज्ञान परिषद अधिनियम 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय आयुर्विज्ञान परिषद से परामर्श करने के पश्चात् उक्त अधिनियम की पहली अनुसूची का निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अनुसूची में, उस्मानिया विश्वविद्यालय, से संबंधित प्रविष्टियों के पश्चात् निम्नलिखित प्रविष्टियाँ अतः स्थापित की जाएंगी, अर्थात् :—

"उस्मानिया विश्वविद्यालय,
हैदराबाद

1स्टर आक सर्जरी	एम. एच. (जन. सर्ज.)
(जनरल सर्जरी)	
मास्टर आक सर्जरी	एम. एच. (श. मा.)
(शरीर शास्त्र)	

टिप्पणी:— उपर्युक्त प्रवृत्ता तब, मास्यता प्राप्त विश्वविद्यालय प्रवृत्ता होगी, जब गांधी मेडिकल कॉलेज, हैदराबाद में प्रशिक्षित विद्यार्थियों को उस्मानिया विश्वविद्यालय द्वारा अनुमति दी गई होगी।

[सं. बी. 11015/46/88 म. ई. (पी)]

आर. श्रीनिवासन, अवर सचिव

S.O. 3551.—In exercise of the powers conferred by sub-section (2) of Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule, after the entries relating to the Osmania University, the following entries shall be inserted namely :—

"Osmania University, Hyderabad,
Master of Surgery (General Surgery)

M. S. (Genl. Surg.)

Master of Surgery (Anatomy) M. S. (Ana.)

NOTE.—The above qualification shall be recognised medical qualification when granted by Osmania University to the students trained at Gandhi Medical College, Hyderabad."

[No. V 11015/46/88-ME(P)]

R. SRINIVASAN, Under Secy.

अथ मंत्रालय

नई दिल्ली, 8 नवम्बर, 1988

का. आ. 3552.—उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उत्प्रवास संरक्षी कार्यालय बण्डीगढ़ में श्री जी. एस. संधु, अनुभाग अधिकारी, अथ भ्यूरो बण्डीगढ़ को दिनांक 10-11-88 से 11-11-88 तक उत्प्रवास संरक्षी बण्डीगढ़ के सभी कार्य करने के लिए प्राधिकृत करती है।

[सं. ए 22012 (1) /86 उत्प्र. प्र.-2]

MINISTRY OF LABOUR

New Delhi, the 8th November, 1988

S.O. 3552.—In exercise of the powers conferred by Section 5 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby authorises Shri G. S. Sandhu, Section Officer, Labour Bureau, Chandigarh to perform all functions of Protector of Emigrants, Chandigarh during the period from 10-11-88 to 11-11-88.

[No. A-22012(1)/86-Emig. II]

नई दिल्ली, 15 नवम्बर, 1988

का. आ. 3553.—उत्प्रवास अधिनियम 1983 (1983 का 31) की धारा 3 की उपधारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार अनुभाग अधिकारी श्री आर. जी. साहु को दिनांक 17 नवम्बर 1988 से प्रगला प्रादेश जारी होने तक उत्प्रवास संरक्षी-II बम्बई के रूप में नियुक्त करती है।

[सं. ए 22012(1)/86 उत्प्र. 2]

एम. एस. हांपरी अवर सचिव

New Delhi, the 15th November, 1988

S.O. 3553.—In exercise of the powers conferred by Section 3, sub-section (i) of the Emigration Act, 1983 (31 of 1983), the Central Government hereby appoints Shri R. G. Sahu, Section Officer as Protector of Emigrants-II, Bombay, with effect from 17th November, 1988 till further orders.

[No. A-22012(1)/86-Emig. II]

M. S. TANGRY, Under Secy.

नई दिल्ली 16 नवम्बर, 1988

का. आ. 3554.—उत्प्रवास राज्य सरकार ने कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के खण्ड (ब) के अनुसरण में श्री बी. के. विसल के स्थान पर श्री वृजेश कुमार, सचिव, अथ विश्वास उत्तर प्रदेश सरकार को कर्मचारी राज्य बीमा नियम में उन राज्य का प्रतिनिधित्व करने के लिए नामनिर्दिष्ट किया है ;

अतः अब केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के अनुसरण में भारत सरकार के अथ मंत्रालय की अधिसूचना संख्या का. आ. 545 (अ) दिनांक 25 जुलाई, 1985 में निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में "राज्य सरकार द्वारा धारा 4 के खण्ड (ब) के अधीन नामनिर्दिष्ट अधिकारी के बीच मद् 28 के सामने की प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात् :—

श्री वृजेश कुमार,
सचिव उत्तर प्रदेश सरकार
अजमेर

[संख्या यू. 16012 /13 /87 एच एच -I]

New Delhi, the 15th November, 1988

S.O. 3554.—Whereas the State Government of Uttar Pradesh has, in pursuance of clause (d) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), nominated Sh. Brijesh Kumar, Secretary, Labour Department, Govt. of U.P. to represent that State on the Employees' State Insurance Corporation, in place of Shri D. K. Mittal;

Now, therefore in pursuance of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Labour, S.O. No. 545(E), dated the 25th July, 1985, namely :—

In the said notification, under the heading "(Nominated by the State Government under clause (d) of section 4)", for the entry against Serial Number 26, the following entry shall be substituted, namely :—

Sh. Brijesh Kumar,
Secretary to the Govt. of Uttar Pradesh,
Labour Department,
Lucknow.

[No. U-16012/13/87 SS.I]

नई दिल्ली 17 नवम्बर, 1988

का. प्रा. 3555.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1-12-88 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) और अध्याय 5 और 6 (धारा 76 की उपधारा (i) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध भारत प्रदेश राज्य के निम्नलिखित क्षेत्र में प्रवृत्त होंगे अर्थात्—

"जिला कुष्मा के राज्य मंडल पेंनामालूर में राजस्व ग्राम पोरंकी के अस्तित्व वाले क्षेत्र"

[नं. एस. 38013/36/88-एस. एस. I]

New Delhi, the 17th November, 1988

S.O. 3555.—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st December, 1988 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force) and Chapters V and VI (except sub-section (1) of section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"The area within the revenue village of Poranki under Penamalur revenue mandal in Krishna District".

[No. S-38013/36/88-SS I]

का. प्रा. 3556.—कर्मचारी राज्य बीमा अधिनियम 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1-12-88 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) और अध्याय 5 और 6 (धारा 76 की उपधारा (i) और धारा 77,

78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध कर्नाटक राज्य के निम्न लिखित क्षेत्र में प्रवृत्त होंगे, अर्थात्

राजस्व ग्राम का होबली	तालुका	जिला	
नाम या नगर			
पालिका सीमा			
कानगावा	संकेशवरा	हुक्केरी	बेलगाव
[सं. पृष्ठ 38013 / 38/ 88-गम् एम् -1]			

[नं. एस. 38013/38/88-एस. एस. —I]

S. O. 3556.—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act 1948 (34 of 1948), the Central Government hereby appoints the 1st December, 1988 as the date on which the provisions of Chapter IV (except section 44 and 45 which have already been brought into force) and Chapters V and VI (except sub-section (1) of section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Karnataka namely :

Name of the revenue village or Municipal Limit	Hubli	Taluk	District
Kanagala	Sankeshwara	Hukkeri	Belgaum

[No. S-38013/38/88-SS.I]

का. प्रा. 3557.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1-12-88 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) और अध्याय 5 और 6 (धारा 76 की उपधारा (i) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध कर्नाटक राज्य के निम्नलिखित क्षेत्र में प्रवृत्त होंगे, अर्थात्—

राजस्व ग्राम का नाम या होबली और तालुका जिला
नगरपालिका सीमा

मालखेद	सैडम	गुलबर्गा

[नं. एस. 38013/34/88-एस. एस. 14]

S.O. 3557.—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act 1948 (34 of 1948) the Central Government hereby appoints the 1st December 1988 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force) and Chapters V and VI (except sub-section (1) of section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Karnataka namely :

Name of the Revenue village or Municipal Limit	Hubli and Taluk	District
Malkhed	Sedam	Gulbarga

[No. S-38013/34/88 SS.I]

का. घा. 3558.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा 1-12-88 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) अध्याय 5 और 6 (धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध कर्नाटक राज्य के निम्न लिखित क्षेत्र में प्रवृत्त होंगे, प्रार्थना:—

राजस्व ग्राम का नाम या नगरपालिका होबली तालुक और जिला सीमा

बेलकुन्दी	बागपादी	बेलगांव
[सं. एस 38013/37/88-एस. एस. 1]		

S. O. 3558.—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act 1948 (34 of 1948) the Central Government hereby appoints the 1st December 1988 as the date on which the provisions of Chapter IV (except section 44 and 45 which have already been brought into force and Chapters V and VI (except sub-section (1) of section 76 and Sections 77, 78, 79 and 81 which have already been brought into force of the said Act shall come into force in the following areas in the State of Karnataka namely:—

Name of the revenue village or Municipal Limits	Hobl	Taluk & District
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Balekundri	Bagpadi	Belgaum
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[No. S-38013/37/88-SS-I]

नई दिल्ली 18 नवम्बर, 1988

का. घा. 3559.—केन्द्रीय सरकार कर्मचारी भविष्य निधि और प्रकीर्ण उपबन्ध अधिनियम, 1952 (1952 का 19) की धारा 5 ए की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार एतद्वारा श्री ए. वेङ्कटराम को स्वर्गीय श्री बी. एन. साठे के स्थान पर केन्द्रीय ग्यासी बोर्ड का सदस्य नियुक्त करती है और भारत सरकार के राजपत्र भाग 2, खण्ड 3 (ii) दिनांक 18 सितम्बर, 1985 में प्रकाशित भारत सरकार के धर्म मंत्रालय की अधिसूचना संख्या 677 (ई) दिनांक 18 सितम्बर, 1985 में निम्नलिखित संशोधन करती है।

2. उक्त अधिसूचना में क्रम संख्या 29 के सामने की प्रविष्टि के स्थान पर निम्न लिखित प्रविष्टि की जायेगी, प्रार्थना:—

"श्री ए. वेङ्कटराम,

भारतीय मजदूर संघ

सूबेदार चेताराम रोड

बंगलूर-560009

[संख्या बी-20012(1)/88-स. मु. -2]

New Delhi, the 18th November, 1988

S.O. 3559.—In exercise of the powers conferred by sub-section (1) of section 5A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby appoints Shri A. Venkataram, as a member of the Central Board of Trustees in place of late

Shri B. N. Sathaya and makes the following amendment in the notification of the Government of India in the Ministry of Labour No. S.O. 677(E), dated the 18th September, 1985 published in Part-II, Section 3, Sub-section (ii) of the Gazette of India Extra-ordinary dated the 18th September, 1985.

In the said notification, against serial No. 29 and entries relating thereto the following shall be substituted, namely:—

"Shri A. Venkataram,
Bharatiya Mazdoor Sangh,
Subedar Chetram Road,
Bangalore-560009."

[No. V-20012(1)/88-SS-II]

का. घा. 3560.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा 1-12-88 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) और अध्याय 5 और 6 (धारा 76 की उपधारा (i) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध आन्ध्र प्रदेश राज्य के निम्न लिखित क्षेत्र में प्रवृत्त होंगे, प्रार्थना:—

"जिला चित्तूर के राजस्व मंडल मदानापल्ली में राजस्व ग्राम बालापल्ली के के अन्तर्गत आने वाले क्षेत्र"

[सं. एस. 38013/35/88-एस. एस. 1]

ए. के. भट्टारार्थ, सचिव

S.O. 3560.—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Govt. hereby appoints the 1st Dec., 1988 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force) and Chapters V and VI (except sub-section (1) of section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely:

"The area within the revenue village of Valasapalli under Madanapally revenue Mandal in Chittoor District".

[No. S-38013/35/88-SS-I]

A. K. BHATTARAI, Under Secy.

नई दिल्ली 16 नवम्बर 1988

का. घा. 3561.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार नेशनल एयरपोर्ट्स अथॉरिटी कानपुर के प्रबन्धक से सम्बन्ध नियोक्ताओं और उनके कर्मचारों के बीच, अनुसूच में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 3/11/88 को प्राप्त हुआ था।

New Delhi, the 16th November, 1988

S.O. 3561.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of National Airport Authority, Kanpur and their workmen, which was received by the Central Government on the 3-11-88.

ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
KANPUR

I.D. No. 72 of 1988

In the matter of dispute between

Shri Jagratan,
Through D. P. Srivastava
119/74-157 Nasirabad,
Kanpur.

The Aerodrome Officer,
National Airport Authority
Civil Aerodrome,
Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-11012/18/87-D.II(B) dt., 3-6-88, has referred the following dispute for adjudication to this Tribunal:

Whether the action of the management of National Airport Authority, Kanpur in terminating Shri Jag Ratan Service w.e.f. 15-8-84 is legal justified? If not, to what relief the workman concerned is entitled to and from what date?

2. Workman's case in short is that he was appointed as casual labour in the Civil Aviation Department on 2-5-81. He worked continuously, thereafter, till the date of his unlawful termination on 15-8-84. According to him his services were terminated by the management without compliance of the provisions of section 25F I.D. Act.

3. The case proceeded exparte against the management. In support of his case the workman has filed his affidavit from the affidavit and the photostat copies of the certificate dt. 12-9-84, issued by Viman Kahetra Adhikari Kanpur its stands proved that he had worked continuously as a casual labour from 2-5-81 to 14-8-81, and that he was not given any notice or notice pay and retrenchment compensation.

4. It is, therefore, held that the action of the management of National Air Port Authority, Kanpur, in terminating the services of Shri Jag Ratan w.e.f. 15-8-84 is not legally justified. The result is that he is entitled to be reinstated in service with full back wages and with continuity of service. The workman will have to produce an affidavit to the effect that he was not gainfully employed else where during the period when he was out of employment from the management.

5. Reference is answered accordingly.

ARJAN DEV, Presiding Officer
[No. L-11012/18/87-D.IIB/D.IIIB.]

का. प्र. 3562—औद्योगिक विवाद प्रधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास डोक लेबर बोर्ड मद्रास के प्रबन्धन से सम्बन्धित विवादों और उसके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक प्रतिक्रिया, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3/11/88 को प्राप्त हुआ था।

S.O. 3562.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Madras Dock Labour Board, Madras and their workmen, which was received by the Central Government, on the 4-11-88.

2936 GI/88—2

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU
MADRAS

Tuesday, the 23rd day of August, 1988

PRESENT :

Thiru. K. Natarajan, M.A. B.L.,

Industrial Tribunal

Industrial Dispute No. 121 of 1987

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of Madras Dock Labour Board, Madras).

BETWEEN

The workmen represented by
The Secretary,

The Madras Harbour Workers' Union,
204, Prakasam Salai, Broadway, Madras-600108.

AND

The Chairman,
Madras Dock Labour Board,
Rajaji Salai, Madras-600001.

REFERENCE :

Order No. L-33012/1/87-D.IV(A), dated 9-10-1987 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on this day for final disposal in the presence of Thiruvalargal Aiyar and Dolla and R. Arumugham Advocates appearing for the Management upon perusing the reference, claim and counter statements and other connected papers on record and the workmen being absent, this Tribunal passed the following.

AWARD

This dispute between the workmen and the Management of Madras Dock Labour Board, Madras arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-33012/1/87-D.IV(A), dated 9-10-1987 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the management of Madras Dock Labour Board, Madras in awarding the punishment of stoppage of two increments with cumulative effect to Smt. T. K. Rajakanthamani. Peon, vide order dated 27-7-84 is justified? If not, to what relief the concerned workman is entitled?

(2) Parties were served with summons.

(3) The Petitioner-Union filed its claim statement on 13-11-1987 putting forth the claim of the workmen. In repudiation thereof, the Management filed their counter statement on 29-12-1987.

(4) In spite of several adjournments, the Petitioner-Union was absent and no representation was made on its behalf.

(5) Today also when the dispute was taken up for enquiry, the Petitioner-Union was absent and no representation was made. The Management was represented by counsel and ready.

(6) Hence Industrial Dispute is dismissed for default.

Dated, his 23rd day of August, 1988.

Industrial Tribunal

[No. L-33012/1/87-D.IV(A)/D.III.B]

नई दिल्ली, 17 नवम्बर, 1988

का. भा. 3563—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रायल इंडिया लि. बुलियाजन के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-11-88 को प्राप्त हुआ था।

New Delhi, the 17th November, 1988

S.O. 3563.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Oil India Limited, Duliagan and their workmen which was received by the Central Government on the 3rd November 1988.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 87 of 1980

PARTIES :

Oil India Limited.

AND

Shri Syed Mohammad Mamod Chistie their workman.

APPEARANCES :

On behalf of employer—Mr. P. K. Goswami, Advocate with Mr S. N. Sharma, Advocate.

On behalf of workman—Mr Sunmit Dutt, Advocate with Mr. D. K. Das Gupta, Advocate.

STATE : Assam.

INDUSTRY : Petroleum

AWARD

By Order No. L-30012/2/79-D.III B dated 29th October, 1980, the Government of India, Ministry of Labour, referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Oil India Limited, Duliagan in terminating the services of Shri Syed Mohammed Mamod Chistie, Motor Fitter on superannuation on 31-12-1978 was justified? If not what relief the workman is entitled to ?

2. The case of the workman in brief is this : the workman joined the Assam Oil Company (A.O.C. for brief), Digboi in July, 1940 as Bicycle Fitter in the motor garage and he was about 13 years old at that time. He worked in that Company till 31st December, 1961 and his services were transferred to Oil India Limited (O.I.L. for brief) with effect from 1st January, 1962.

3. During his service with A.O.C., the Company never asked the workman about his date of birth. After his services were transferred to the O.I.L. with effect from 1st January, 1962, the workman on his own initiative by his letter dated 11-2-1962 addressed to the Labour Superintendent of O.I.L. alongwith an affidavit dated 5-2-1962 regarding his date of birth, informed the O.I.L. that his date of birth was 15th October, 1927. The workman was however not informed about the fate of such letter. In the mean time in May, 1966, the O.I.L. issued the Identity Card to the workman and his year of birth was recorded therein as 1925, which was also wrong. The O.I.L. by their notice of retirement dated 15-5-78 informed the workman that he would be retiring from the Company's services with the end of December, 1978 and

actually got him retired on 31-12-1978 inspite of the workman's various representations support by affidavit dated 5-2-1962, school leaving certificate dated 30-6-1976 and birth register certificate dated 21-9-1978 issued by the North Lakhimpur Municipality about his date of birth as on 25th October, 1927.

4. The O.I.L. on the other hand erroneously got recorded the workman's year of birth as 1920 instead of 15th October, 1927 in the other records concerning the workman including the Provident Fund withdrawal application and Gratuity application. The workman was however not aware from what source the O.I.L. got such year of birth of the workman recorded in the aforesaid documents. In spite of the request of the workman, the O.I.L. did not revoke the illegal retirement and re-instate him to the service. The workman then moved the Assistant Labour Commissioner (C), Guahati against such illegal retirement for conciliation and the failure report resulted in the present reference for adjudication.

5. The case of the employer O.I.L. as made out in the written statement is briefly as follows : According to the management, the workman retired in accordance with the service condition on attaining 58 years of age and the retirement being not termination of service, the present reference under section 10 read with section 2A of the Industrial Disputes Act, 1947 is not valid and maintainable.

6. The workman while joining in A.O.C. in July, 1940, voluntarily declared his year of birth as 1920 and the said year of birth was recorded in his service card. The present employer O.I.L. took over the services of the workman on 1st January, 1962 and obtained the relevant service record of the workman concerned. The age of superannuation being 58 years the workman's retirement became due on 31-12-1978. The management accordingly served the retirement notice dated 15-5-1978 upon the workman intimating him that he would retire on 31st December, 1978. On receipt of the said retirement notice the workman concerned by his letter dated 1-6-1978 enclosing therewith a copy of affidavit dated 5-2-1962 requested for alteration of his year of birth from 1920 to 1927. The management recorded its inability to alter the same and returned the copy of the affidavit. The workman concerned could not satisfy the management why the year of birth recorded as per his declaration made earlier would be changed. The workman in his application for non-renewable withdrawal of the Provident Fund in 1971 and in his application for being a member of the Gratuity Fund in 1976 mentioned his year of birth as 1920.

7. It has been further contended by the management that the workman would be only 13 years old in 1940 when he was first appointed in A.O.C. if it is assumed that the workman was born in 1927 then under the Mines Act the A.O.C. could not appoint child labour like the workman of 13 years. According to the management the workman did not raise any objection to his year of birth as entered in the relevant records of the erstwhile Company and in the relevant records of the present management before he was served with the retirement notice. The workman's allegation in his written statement that he sent his application dated 11-2-1962 alongwith the affidavit dated 5-2-1962 to the Labour Supdt. of the management was not at all true because there was no post of Labour Supdt. in 1962. The management did not receive any such application in 1962.

8. The management has further contended that the Security Office while issuing the identity card might have erroneously recorded the year of birth of the workman concerned as 1925 without obtaining from the concerned office of the management, the year of birth as recorded in the office records. The workman concerned could not satisfy the management to reopen the question about his year of birth and accordingly the management refused to alter the year of birth already declared by the workman at the time of his appointment and confirmed subsequently. The workman concerned was accordingly rightly retired on 31st December, 1978 after completion of 58 years. There has been nothing wrong in getting the workman retired on 31st December, 1978 by the management.

9. The workman has examined himself and none-else and has also produced a number of documents Ext. W-1 to W-12. The Management has examined two witnesses and has produced also a number of documents Ext. M-1 to M-12. Out of the documents filed on both sides, some documents are common.

10. There is no dispute to the fact that the workman concerned was first appointed in A.O.C. in 1940 and his service was transferred to O.I.L. in 1962 along with his service records. The workman (WW-1) has admitted in his deposition that one N. Borah, the clerk of the A.O.C. used to take and record the bio-data of the fresh appointees and that all particulars in the Bio-data of the workman Ext. M-11 excepting his date of birth were correctly recorded on his statement. Ext. M-11 is the Bio-data of the workman and it was filled-up with the particulars of the workman including his year of birth as 1920, immediately after his appointment in A.O.C. MW-2 N. Borah who was a clerk in A.O.C. has stated in his evidence that the particulars of the workman concerned including the year of birth were recorded by him in the bio-data Ext. M-11 on the statement of the concerned workman and that the concerned workman signed the same after the particulars recorded by him were read over to the workman. The signature of the concerned workman on the Bio-data is Ext. M-11[1]. The workman concerned has not disputed his signature Ext. M-11[1]. No man of ordinary prudence can believe that N. Borah (MW-1) who admittedly recorded all other particulars of the workman on his statement will record the year of birth of the workman on Ext. M-11 from his own imagination and not on the statement of the workman when admittedly the workman stated all other particulars of Ext. M-11. It is true that MW-1 (N. Borah) has stated in his cross-examination that generally the year of birth of the selected candidate is noted on the basis of the age given by the selected candidate and that in this particular case he cannot now remember whether the workman concerned told his year of birth or age. He is however certain that the year of birth of the workman concerned was recorded by him in Ext. M-11 on the statement of the workman either about the year of birth or about his age at that time.

11. A.O.C.'s letter dated 28-2-1978 addressed to the concerned workman with copy to the O.I.L. has been produced by the workman and it is Ext. W-9. It appears therefrom that the concerned workman has admitted the position as expressed therein that the year of birth was voluntarily declared by the workman at the time of his engagement in A.O.C. and that the said year of birth was accordingly recorded in the service card and Provident Fund Declaration Form. Service card Ext. M-1 supports the same. Provident Fund Declaration Form has not been produced but the relevant entry in the Register of employees Ext. M-12 relating to the workman corroborates the fact that the workman himself declared his year of birth. On consideration of all the materials in the record, I find no least hesitation to hold that it is the workman concerned who declared his year of birth as 1920 in the Bio-data Ext. M-11 at the time of his appointment in A.O.C.

12. Now the question is whether 1920 as the year of birth as declared by the concerned workman at the time of his appointment in A.O.C. is the correct year of birth of the workman as the workman appears to have challenged the correctness of the same by his subsequent statement that his date of birth is 15-10-1927.

13. According to the concerned workman (WW-1), after the transfer of his service from A.O.C. to O.I.L. with effect from 1-1-1962, he served the letter dated 11-2-1962 Ext. W-10 along with the affidavit dated 5-2-1962 Ext. W-10[1] to the O.I.L. for correction of his age, thereby implying that at least on 11-2-1962 he was aware that wrong year of birth was recorded in the service record of A.O.C. with regard to the workman. The written statement filed by the workman concerned however gives a different picture. According to the written statement, the workman did not at all declare his year of birth at the time of his appointment in A.O.C. or subsequently during his service there and that on his transfer to O.I.L. in 1962, he of his own initiative sent the letter dated 11-2-1962 along with the affidavit dated 5-2-1962 for incorporating his date of birth. Be that as it may, the question is whether the workman sent the letter

dated 11-2-1962 Ext. W-10 along with the affidavit Ext. W-10[1] to O.I.L. The receipt of such letter along with the affidavit in 1962 by the O.I.L. has been denied, both in the pleading and in deposition. The copy of the letter dated 11-2-1962 Ext. W-10 does not indicate that the original was received by the office of O.I.L. MW-2 M.M. Majumder (Industrial Relation Officer of O.I.L.) has stated in his evidence that O.I.L. did not receive the original of letter dated 11-2-1962 Ext. W-10 along with the affidavit Ext. W-10[1]. The workman (WW-1) has stated in his evidence that he sent the letter Ext. W-10 along with the affidavit Ext. W-10[1] to O.I.L. but in his pleading he has stated that he personally handed over that letter to the Labour Superintendent. The evidence of MW-2 shows without any challenge that in 1962 there was no post of Labour Superintendent but there was a post of Labour Welfare Officer. The workman therefore, could not prove that he actually sent or handed over the letter Ext. W-10 along with the affidavit Ext. W-10[1] to O.I.L. in 1962.

14. This fact is further supported by the silence of the workman after getting the identity card Ext. W-4 in 1966, the Security Officer of the O.I.L., containing therein the year of birth of the workman as 1925. WW-1 (workman) has stated in his evidence that the identity card Ext. W-4 was issued to him in 1966. The identity card admittedly contains a mistaken year of birth of the workman, as according to the workman his year of birth is 1927 and according to the Management his year of birth is 1920. The evidence on the side of the Management has shown that the Security Officer of O.I.L. without obtaining the year of birth of the workman from the service record maintained by the concerned office, recorded the erroneous year of birth 1925 while issuing the Identity Card in 1966. What I want to stress here is that even after receipt of the identity card Ext. W-4 containing the year of birth as 1925, the workman did not refer to the O.I.L. about his alleged letter dated 11-2-1962.

15. It however appears from the Management's letter dated 18-3-1977 Ext. M-6 (which corresponds to Ext. W-6) to the workman that the Management received the application along with the affidavit on 14-3-1977 through Transport Superintendent and that by the said letter informed the workman of their inability to alter the year of birth recorded by the A.O.C. at the time of his first appointment and returned the affidavit. Similarly, Management's letter dated 20-6-1978 Ext. M-3 (which corresponds to Ext. W-7) addressed to the workman shows that in reply to workman's application dated 1-6-1978, the management regretted their inability to alter the year of birth and returned the copy of the affidavit which was an annexure to the workman's letter dated 1-6-1978. It is an admitted fact that the retirement notice dated 15-5-1978 (Ext. M-2) issued by the management was received by the workman. On receipt of the said retirement notice, the workman sent the letter dated 1-6-1978 Ext. W-5 to the O.I.L. The documents filed by both parties and marked exhibits before the Tribunal do not indicate that the workman forwarded the School Certificate dated 20-6-1976 Ext. W-11 and the copy of the Birth Registration Certificate dated 21-9-1978 Ext. W-12 for consideration of the Management in the matter of the year of birth of the workman concerned. MW-2 Shri Majumder has however admitted in his evidence that the Ext. W-11 and Ext. W-12 were sent by the workman to the office of the management after he got the retirement notice dated 15-5-1978 and that the employer O.I.L. did not accept such documents as valid document because they were in contrast to the earlier materials in the service record. The return of the affidavit dated 5-2-1962 Ext. W-10 by the management to the workman without altering the year of birth in office record implies that the management did not accept the statement sworn therein by the alleged uncle of the workman.

16. It has already been shown that on declaration by the workman himself, his year of birth as 1920 was recorded in the Bio-data Ext. M-11 in 1940. Item No. 5 of the Bio-data Ext. M-11 against which '1920' has been recorded reads as "Probable year of birth". Mr. Dutta, the learned counsel for the workman submits that '1920' which was accepted by the management as "Probable year of birth" of the workman as per their own admission in the Bio-data Ext. M-11, required to be verified on proper documents and that

when the workman prayed for alteration of the year of birth as recorded in the records of the management by 1927 in place of 1920 with supporting documents, the management refused to do so with the plea that the year of birth once recorded in the records on the declaration of the workman could not be altered.

17. Mr. Goswami, the Learned Advocate for the Management on the other hand submits that "1920" recorded in the Bio-data Ext. M-11 as the "Probable year of birth" was subsequently consumed by the workman by stating his year of birth as 1920, in his application for non-repayable withdrawal of Provident Fund in 1971 Ext. M-4 and in the application for being a member of the Gratuity Fund in 1976 Ext. M-5. Both the aforesaid applications bear the admitted signature of the workman. It is true that admitted signature of the workman. It is true that the workman has stated in his evidence that the particulars of the workman including his year of birth in the said applications Ext. H-4 and M-5 were not written by him although he signed the same. The workman himself may not write the particulars including his year of birth but his admitted signature therein indicates that he was aware of the particulars recorded in the applications and accepted the same as correct at that time. Such being the position I find substance in Mr. Goswami's argument that the workman consumed 1920 as the year of birth recorded against item No. 5 in Bio-data Ext. M-11 in 1940 as the Probable year of birth.

18. In this reference before this Tribunal both parties have filed their respective documents in support of their contention and this Tribunal under the law is required to give a decision on the date of birth of the workman concerned while adjudication the reference in question on the basis of the material placed before the Tribunal.

19. It has already been shown that the year of birth of the workman concerned was recorded in the Bio-data Ext. M-11 on declaration by the workman himself at the time of his first appointment and that the workman concerned subsequently reported his said year of birth in the application for non-repayable withdrawal of Provident Fund Ext. M-4 in 1971 and in the application for being a member of the Gratuity Fund in 1976.

20. The workman has produced the affidavit dated 5-2-1962 Ext. W-10/1, the School Certificate dated 26-6-1976 Ext. W-11 and the alleged certified copy of the Birth Register of the workman concerned Ext. W-12 in support of his assertion that his date of birth was 15-12-1927. It has already been shown that the management did not accept the said supporting documents as valid one to alter the year of birth already declared and confirmed by the workman and accepted by the management. It appears from the affidavit Ext. W-10/1 that the said affidavit was affirmed by one Abdul Hossain Chistie, who has described himself as the uncle of the workman concerned. The said affidavit was sworn on 5-2-1962 and it appears from the affidavit itself that it was sent to the Life Insurance Corporation of India on 19-4-1962 in connection with one policy number. The swearer of the said affidavit has not been brought before the Tribunal to give the opportunity to the management to cross examine him on the statement made in the affidavit. There is nothing in the evidence of the workman (WW-1) to show that the swearer of the affidavit is not alive. The evidence of the workman (WW-1) shows that his mother died in 1986 and his father died in 1954. The workman has no doubt stated in his evidence that he did not get any affidavit sworn by his mother regarding his date of birth as she was a Pardanasin lady. The mother could have sworn the affidavit on commission. Be that as it may, the swearer of the affidavit, the alleged uncle of the workman concerned having not been placed for cross-examination, the affidavit has lost its value.

21. The affidavit no doubt contains the assertion of the swearer that the workman concerned was born on 15th October, 1927. The workman (WW-1) has stated in his evidence in cross-examination that at the time of his birth his father was the Civil Servant and that his father left the Government service in 1922. If the said evidence of the workman is accepted as true, then his own statement establishes that he was born before 1922. It appears that in an

unguarded moment the workman at the time of his cross-examination has given rather the correct picture about his year of birth as declared by him at the time of his appointment in the service. It may be argued that the workman who had not seen his father retiring from the government service and has no personal memory that at the time of his birth his father was a government servant the aforesaid evidence of the workman has got no value. It appears that the aforesaid evidence of the workman with regard to the retirement of his father and with regard to his birth during the service of his father has been given by the deponent on his derivative knowledge from the proper source, which may be his mother or other near relations. Be that as it may, the evidence of the workman himself falsifies the statement in affidavit about his date of birth.

22. The School Certificate Ext. W-11 appears to have been obtained by the workman in June, 1976 from the alleged Head Master of the primary school. The evidence of the workman (WW-1) shows that the Head Master is no more alive. The workman has not produced the admission register of the school containing the date of birth of the workman. In the absence of such register of the school and when the School Certificate has been seriously challenged by the management, no evidential value can be attached to the said School Certificate. Further it appears from the School Certificate that the workman concerned read upto third class in the primary school and could not pass the examination. Bio-data Ext. M-11 recorded against item No. 7(a) regarding educational qualifications shows that the workman read upto class-VIII. According to the workman's own admission in evidence, all other particulars in the Bio-data Ext. M-11 excepting the year of birth were recorded on his own statement and the said particulars were correct. The signature of the workman in English on the Bio-data Ext. M-11 in 1940 shows that the workman had nice and experienced hand in English in writing his signature, thereby indicating that his declaration to the effect that he read upto Class-VIII is correct. If that is so, then the question arises why the workman did not produce the certificate from the School where he read upto Class-VIII, the workman has not given any explanation for the same. Having considered all the facts and circumstances with reference to the materials in the record I find that the management rightly did not accept the School Certificate Ext. W-11 to alter the year of birth of the workman as recorded in the service record.

23. Next comes the alleged certified copy of the Birth Register Ext W-12 relating to the workman concerned, Mr. Goswami, the Learned Advocate for the management has submitted that the alleged certified copy cannot be treated as the certified copy of the public document. It appears that he said certified copy was marked exhibit under and objection by the management. Mr. Goswami has challenged the propriety of the alleged certified copy of the Birth Register on the ground that it has not been proved that the Head Assistant of the municipal Board under whose signature the aforesaid certified copy was issued had the authority to sign the certified copy and issue the same in accordance with the provisions of section 76 of the Evidence Act. It has not been proved that the Head Assistant as the public officer was in the custody of the Birth Register and was authorised to issue the certified copy of the Birth Register under his signature. The certified copy of the Birth Register Ext M-12 contains peculiar insertion to the effect "for Syed Md. Mohamad Chistis". It cannot be conceived that the Birth Register, if there be any, containing the entry of the alleged birth of the workman in 1927 would contain such insertion as indicated in the certified copy. This particular insertion itself shows that it is not the true certified copy. The management has produced one letter dated 30th April 1981 Ext M-10 received from the Executive Officer of the concerned Municipal Board in reply to management's letter dated 27th April, 1981 Ext M-9, although not in connection with the dispute of the present reference. It appears from the said letter of the Municipal Board Ext. M-10 that the Municipality has been maintaining the Birth Register since 1938. The aforesaid letter Ext M-10 of the Executive Officer of the Municipal Board shows that in 1927 the Municipality did not maintain any Birth Register. This particular fact alone falsifies the veracity and genuineness of the certified copy of the Birth Register Ext M-12.

24. In view of the above it appears that the management rightly did not accept the aforesaid document Exts. M-10/1, W-11 and W-12 to alter the year of birth as already recorded in a number of records of the management on the basis of the declaration of the workman himself.

25. There is no dispute to the fact that the 58 years is the age of superannuation of the workman concerned employed under the management. On consideration of the materials in the record I find that the year of birth of the workman is 1920 and the management has rightly got the workman concerned retired on 31st December, 1978.

26. The management's objection regarding the maintainability of the reference on the ground that the retirement of the workman concerned is not the termination of his service to attract the provisions of section A of the Industrial Disputes Act, 1947 I find no substance in such objection as the workman has raised the dispute over his premature retirement according to him and treating the said premature retirement as the termination of his service and the reference was accordingly rightly made by the Government under section 10 of the Industrial Disputes Act, 1947.

27. In view of the discussion as made above, I find that the action of the management in retiring the workman concerned on 31st December, 1978 is not unjustified and the workman is not entitled to any relief.

This is my Award.

Dated, Calcutta,

The 21st October, 1988.

Sd.-

SAKUMAR CHAKRAVARTY, Presiding Officer

[No. L-30012/2/79-D.III(B)]

का. मा. 3564—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैक्स हिन्दुस्तान पेट्रोलेम कारपोरेशन लि. बम्बई के प्रबंधक से सम्बन्धित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1 बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-11-88 को प्राप्त हुआ था।

S.O. 3564.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Ltd., Bombay and their workmen, which was received by the Central Government on the 8-11-1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY

Reference No. CGIT-12 of 1988

PARTIES :

Employers in relation to the management of M/s. Hindustan Petroleum Corporation Limited, Bombay

AND

Their Workmen

APPEARANCES:—

For the management.—Mr. P. M. Palshikar, Advocate.

For the workmen.—Mr. V. B. Gharniya, Advocate
Industry :—Petroleum

State.—Maharashtra

Bombay, the 31st day of October, 1988

AWARD

The Central Government in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, has referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the management of M/s. Hindustan Petroleum Corporation Limited, Bombay, in relation to its Sewri/Wadala Terminal-II, Bombay in dismissing Shri D. R. Waghela, Filler, from service w.e.f. 4th Sept. 1986 is justified. If not, what relief the workman concerned is entitled to?"

2. The workman Shri D. R. Waghela was charge sheeted for the following misconducts :—

- (i) Riotous, disorderly and/or indecent behaviour in Company's premises.
- (ii) Commission of Act subversive of discipline or good behaviour in the Company's premises
- (iii) Tempering with the office records.
- (iv) Leaving the installation premises without permission.

3. The charges were sequel to an incident which took place on December 24, 1985 at Sewri installation (II) of the Hindustan Petroleum Corporation and were based on the allegations contained in a complaint letter dated 24-12-85 submitted to the Deputy Manager-Installation by the Time Keeper Shri S. M. Gangurde. It was alleged that on December 24, 1985 Shri D. R. Waghela's duty hours were from 3.00 P. M. to 11.00 P. M. at Sewri Installation (II). On that day he came to the Installation, at about 12.00 noon and behaved in a disorderly manner in the canteen and in the Office. At about 2.30 P.M. he approached Shri D. D'Costa, Deputy Manager-Installation, and got the "Time-In" entered in his time cards as the Time Clock was not working on that day. Thereafter he approached Time-Keeper Shri S. M. Gangurde and asked for information regarding over-time/deductions. Shri Gangurde explained the same to him but he was not satisfied and started abusing and threatening Shri Gangurde. He picked-up an aluminium dip rod which was lying in the corner of the Office and hit Shri Gangurde on his chest. He then erased the 'Time-In' entered on his time-card and asked Shri D'Costa to mark his absence on that day but the latter refused to oblige and hence he left his leave application for one day's leave on Shri Gangurde's table and left the Installation without permission.

4. The charge sheet-cum-show cause notice was issued to the workman on 9-1-1986. The workman gave a reply to the charge-sheet on 14-1-1986. The reply which is marked Exhibit M-3, (Exhibit p.6 in the enquiry) reads as follows:—

"I refer to your letter BDS/PER dated January 9, 1986 which was received by me on 13-1-1986.

In this regard I wish to submit that when I went to the Time-Keeper Shri S. M. Gangurde, I was in a bad state of mind due to domestic problems. There was some misunderstanding about what Gangurde told and I got upset. I lost my control and take action which now I have realised I should not have done. I therefore apologise to Shri Gangurde and to you for the same.

I regret for the actions taken by me on 24-12-1985 and request you to condone the same. I assure you that in future this will not be repeated and oblige me by giving me an opportunity to serve in the Corporation. I have nothing more to say in this respect.

Thanking you."

5. Even though in the above quoted reply the workman admitted the charges levelled against him an enquiry was

held by an enquiry officer duly appointed by the management. The proceedings of the enquiry are marked Exhibit M-4, on admission. As seen from this record the workman was present throughout the enquiry and signed each page of the enquiry proceeding, which was commenced on March 6, 1986. On that day he requested for one week's time for arranging his defence. This request was granted and the enquiry was postponed on 13-3-1986. On that day when he was questioned about the arrangement made by him for his defence, the workman stated that he could not get anybody to defend him and he would like to defend himself. He confirmed having received the Charge-sheet and accepted the charges as detailed in the charge-sheet. The Presiding Officer then presented the management's case to the enquiry officer and tendered in evidence the letter written by Joint Medical Director of the Corporation in respect of the injury sustained by Shri Gangurde, the complainant letter dated 24-12-1985 submitted by Shri Gangurde to the Deputy Manager, Sevri-II terminal, the report made to the Senior Manager, Sevri by the Clerical and Supervisory Staff at Sevri in respect of the incident in question, a copy of the order suspending Shri Waghela, the charge-sheet served on Shri Waghela. Shri Waghela's reply to the Charge-sheet, Shri Waghela's time card and the leave application given by Shri Waghela on 24-12-1985. Shri Waghela admitted that the time card was his card and he had submitted the application for leave on 24-12-1985. During his examination by the enquiry officer Shri Waghela admitted that he got the time recorded on his time card from the Deputy Manager, that he hit Shri Gangurde by means of a dip rod, that he gave the leave application and before going home he erased "Time-In" recorded earlier on the time card for that day. He also stated as follows :—

"I have already replied to the Charge Sheet dated 9-1-1986 vide my letter dated 14-1-1986 and accepted the charges and also mentioned therein that the incident which happened should not have happened. Because I had some domestic problems, I lost my control and did the act (beating Shri Gangurde) for which I am repenting now. I therefore humbly submit that I may be pardoned and should not be given serious punishment. In future I assure you that I will improve my behaviour and see that such incident will not be repeated."

On the basis of this evidence led before him the enquiry officer submitted a detailed report and on the basis of that report the Director (Marketing) passed the impugned order (Exhibit M-6) dated 4-9-1986. In that order the Director specifically stated that he had carefully considered the enquiry proceedings as well as report of the enquiry officer. Before proceeding to pass the order, he also stated that though the misconduct was of a serious nature, on compassionate grounds it was decided to discharge the workman from services of the Corporation with one month's wages in lieu of notice, instead of dismissing him.

6. There is no substance in the contention urged by Shri Gharniya, the learned advocate for the workman that no full and proper opportunity was given to the workman to defend himself at the enquiry. Shri Gharniya tried to urge that copies of the relevant documents were not supplied to the workman along with the charge sheet nor even at the commencement of the enquiry. This lapse, according to Shri Gharniya prejudiced the defence of the workman. This contention deserves to be rejected, because it was not necessary to supply copies of the documents along with the chargesheet. It was also not necessary to supply the copies at the commencement of the enquiry because the workman categorically admitted the charges levelled against him. He had accepted these charges even in his reply to the show cause notice. Therefore, there was no question of any prejudice having been caused to him in his defence by non-supply of copies of the documents on which the management wanted to rely.

7. Shri Gharniya contended that the letter of apology (reply to the show cause notice) was not admissible in evidence because it was drafted by a union leader. One fails to understand how the said letter becomes inadmissible simply because it was drafted by a union leader. As a matter of fact, the fact that it was drafted by a union leader gave it greater authority and credence. Equally frivolous is the contention that the workman was induced by

the enquiry officer by false promise, to accept the charges levelled against him. No such case is made out in the statement of claim filed by the workman nor did he step in the witness box, to say so on oath.

8. It is clear from the enquiry proceedings that correct procedure was followed by the enquiry officer, that adequate and proper opportunity was given to the workman to defend himself, that he voluntarily accepted the charges levelled against him and that the evidence tendered before the enquiry officer also independently established the charges. The management has also taken a lenient view of the matter on compassionate grounds, even though the misconducts committed by the workman—especially tampering with the company's record—were serious and instead of dismissing the workman from service, has discharged him with one month's notice pay. In view of the gravity of the misconducts it cannot be said that this punishment is harsh. Therefore, there is no justification for interfering with the impugned order.

9. In the result the action of the management in discharging the workman (not dismissal as mentioned in the schedule of reference) was fully justified and the workman is not entitled to any relief. Award accordingly.

M. S. JAMDAR, Presiding Officer

[No. L-30012/29/87-D. III B]

का. प्रा. 3565—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन एयर लाईन्स, मद्रास के प्रबन्धन से सम्बन्धित नियोक्ताओं और उसके कर्म-कारों के बीच, अनुवध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार की 8-11-1988 को प्राप्त हुआ था।

S.O. 3565.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government, Industrial Tribunal, Bangalore, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Airlines, Madras and their workmen, which was received by the Central Government on the 8-1-1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated the 3rd November, 1988

Central Reference No. 8/88

I PARTY

Shri T. Bholanath,
No. 1, C-1, Street,
Bowee Street Cross,
Ulsor,
Bangalore—8

VS.

II PARTY

The Commercial Manager,
Indian Airlines,
Southern Region,
Madras

APPEARANCES

For the I Party Shri V. Gopala Gowda, Advocate.
For the II Party Shri K. Kasturi, Advocate

AWARD

By exercising its powers under Sections 10 (1) (d) and (2A) of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour has made the present reference, on the following point of dispute, by its Order No. L-11012/22/86 D. II (B) dated 29th February 1988.

POINT OF REFERENCE

"Is the management of Indian Airlines, Bangalore justified in removing Shri T. Bholanath, Traffic Assistant from service with effect from 1-6-86? If not, to what relief the workman is entitled?"

2. The I party workman has then filed his claim statement. The averments made, in the claim statement in brief, are as follows:

The I party workman was employed as a Traffic Assistant and was working at Bangalore from 27-9-1979. He was confirmed on 27-3-1980. He was discharging his duties honestly and diligently. His service record is without any blemish. He was drawing a salary of Rs. 1,240. On 18-11-1984, he was rostered for checking-in the passengers for flight IC 525. He accepted all the passengers with valid travel documents, until the close of the counter. Later, he prepared the passenger and baggage lists. By an Order dated 16-1-1985, he was placed under suspension. It was alleged that a complaint had been received from two passengers that they were allowed to travel by IC 525, Bangalore-Hyderabad Flight on 18-11-1984 on payment of fare but without any ticket, and without their names being included in the manifest. The management then issued a chargesheet dated 18-1-1985, alleging certain acts of misconduct under Clause 16 (4) of the standing orders. He submitted his explanation dated 5-2-1985. Then the management started the domestic enquiry. One Shri K. M. A. Koshy, Assistant Manager, Personnel Services, was appointed as the Enquiry Officer, Shri V. S. Ganeshan, Private Secretary to the Regional Director, was appointed as a Presenting Officer. The Enquiry commenced on 3-4-1985 and concluded on 10-8-1985. The Enquiry Officer did not conduct the enquiry in accordance with the principles of natural justice or as per the standing orders. It was an empty formality. He was biased. Copies of documents and day to day proceedings were not given to him. On 29-7-85, the Enquiry Officer had received and marked two letters dated 18-11-84 and 6-1-85, alleged to have been written by one Shri A. Ahmed. They are shown as ME-16 and ME-17. He had objected for marking the same. The said Ahmed was not examined. In spite of his objections, two boarding cards bearing Nos. 2A and 2B were marked as ME-18 and ME-19. They are not introduced through any witness. The statement alleged to have been given by him on 16-1-85 has been marked as ME-20, in spite of his objections. The Enquiry Officer did not allow him to examine himself. He was asked to give his final submission on 29-7-85. He filed his submissions on 10-8-1985. He was permitted to bring an employee as a friend. One Shri S. Pathasarathy was attending the enquiry as friend. He was not allowed to act as a defence representative. He was made to sit like a spectator. He was not allowed to cross-examine the witnesses. He has been prejudiced. He requested the Enquiry Officer to ask the management to produce certain documents. The Enquiry Officer told him that they will be supplied on 6-8-85, but they were never supplied. The Enquiry Officer did not explain to him the procedure of enquiry. He has not recorded the proceedings properly. The Enquiry Officer gave his findings dated 27-2-86, holding him guilty. The finding of the Enquiry Officer is perverse. The finding is not based on legal evidence. The Enquiry Officer failed to note that the best evidence, viz., Shri A. Ahmed was not produced. Shri Y. K. Goel and Shri Thakur who had preponed and had travelled by IC 525 on 18-11-84 were not examined. The several documents such as guardchit etc., have been withheld. The Commercial Manager then issued a second show-cause notice dated 17-4-1986. He gave his explanation dated 17-5-86. The management has referred to certain past unsatisfactory record. The allegation of unsatisfactory record is not correct. The cases regarding reduction in time-scale and reduction in basic-pay are pending in appeal before the Appellate Authority. It is illegal that the management has relied upon these two cases for the purpose of showing that his record is unsatisfactory. An order of dismissal dated 28-5-86 was passed. The disciplinary authority did not independently apply his mind. The order is illegal. He preferred an appeal. It was rejected as per the endorsement dated 17-11-1986. The Appellate Authority did not apply its mind independently. The action of the management amounts to unfair labour practice and victimisation for his legitimate trade union activities. Then he raised the dispute. The punishment is stocking disproportionate.

tionate. Hence, it is prayed that an award may be passed, holding that the order of dismissal is not justified and he may be reinstated with all the consequential benefits.

3. The management has filed its counter statement and inter alia, it has been contended as follow.

On 18-11-84, he was rostered for the morning shift from 0500 hrs. to 1335 hours. Among other duties, he had to check-in in the passengers of Flight of IC 525 on Bangalore Hyderabad Sector. Two passengers, by name, Shri A. Ahmed and Shri T. S. Ramadas reported for the said flight after the counter was closed and asked the I party workman for seats on the said flight. The I party asked them to pay Rs. 800/- and the same was paid to him. The I party workman then issued them two boarding cards bearing seat Nos. 2A and 2B for IC 525, did not issue any ticket. The total number of passengers on board of the said flight was 31. The names of these two passengers were, however, not incorporated in the passenger and baggage list. The I party workman did not issue any ticket to them nor accounted for the money collected by him. In order to account for the total of 31 passengers on board of the said flight, he took flight coupons of passengers who had travelled by airbus flight IC 404 of the same day, 18-11-84 on the Bangalore-Hyderabad sector and had incorporated their names in the passenger and baggage list of IC 525. The said flight coupons bearing Nos. 6659195 and 2100626 pertained to Shri Amrit Thakur and Y. K. Goel, who had travelled by flight IC 404. The names of these two passengers also appear in the passenger and baggage list of IC 404 of 18-11-84, besides being incorporated on the reservation charts of the said flight on that day. The I party workman after accepting Rs. 800/- and not having issued any ticket had manipulated the records of another flight, in order to account for the number of passengers of flight IC 525. The whole incident came to light on a request made by one of the said passengers Shri A. Ahmed for the jacket of the ticket for his travel from Bangalore to Hyderabad, to enable him to claim reimbursement and then it was found that his name was not found in the passenger and baggage list (henceforth called as P & B list) of the flight IC 525 of 18-11-84. On due investigation, it came to light that the I party workman had manipulated the records by lifting two flight coupons of IC 404. Thus, he had committed fraud and dishonesty in connection with the business of the corporation, by not accounting for the money of Rs. 800/- taken by him and for sending the two passengers by IC 525. He has fully participated in the enquiry and was assisted by his friend. On the basis of the evidence placed on record, the Enquiry Officer concluded that he was guilty of the charge. It is not true that he was discharging his duties honestly and diligently. It is not correct that his record was without any blemish. He has been awarded the following punishments:

- (a) Warned on 22-9-82 for irregularities in T.A. Claim;
- (b) Warned on 8-11-82 for loss of flight coupon;
- (c) Warned on 30-11-82 for rude behaviour with the pax;
- (d) Warned on 17-12-82 for unauthorised absence from 29-10-82 to 10-11-82;
- (e) Reduced in time scale by one stage for one year on 25-10-84 for neglect of work;
- (f) Reduced in time scale by three stages with cumulative effect on 31-3-86 for accepting illegal gratification.

It is not correct that he had accepted all the passengers of IC 525 with valid documents. He had taken Rs. 800 and had manipulated the documents. His explanation was not satisfactory. Shri Koshy was appointed as the Enquiry Officer and Shri Ganesan as the Presenting Officer. He did not even whispered about bias. Lists of documents and witnesses were given to him. All the documents that were produced in the enquiry were perused by him and copies were received by him. It is not correct that copies of day to day proceedings were not given to him. It is not true that in spite of his objection Exs. ME-16 and ME-17 were marked. He did not

object for the introduction of this said documents, It is not true that boarding cards 2A and 2B were taken on record in spite of his objections. He had himself accepted that the same were issued by him. It is true that he had objected for the marking of Ex. ME-20. The Enquiry Officer has not relied upon the said document. He was given every opportunity to produce his witnesses and documents. He himself stated that he had no witness nor any document. He gave his statement dated 10-8-85. It is not correct that his friend was not allowed to act as a defence representative effectively. He has actively participated and has cross-examined all the witnesses. It is true that he requested for the production of P & B list of IC 521 and guard chit and also emplaning coupon despatch details of 18-11-84. He had also sought for the trim sheet of IC 525. The P & B list of IC 521 and trim sheet of IC 525 were furnished to him, but he submitted that he did not require those documents. It is not correct that the Enquiry Officer did not explain to him the procedure of enquiry. He did explain. The I party workman is aware of the procedure of enquiry. The Enquiry Officer has recorded the proceedings correctly. The I party workman is an educated and experienced person and he cannot claim that the Enquiry Officer did not record the proceedings properly. The Enquiry Officer found him guilty of the charges, on the basis of the legal evidence placed on record. One of the two passengers by name Shri T. S. Ramadas had appeared before the Enquiry Officer and had confirmed having paid him Rs. 800. He also stated that himself and Shri A. Ahmed had travelled together in flight IC 525 on 18-11-84. He also identified the I party workman as a person to whom he had paid Rs. 800 for the travel from Bangalore to Hyderabad. In order to cover up his act, the I party workman had manipulated the records. The evidence of Shri Ramdas and other management witnesses supported the documentary evidence and established the charges. It is not correct that he had very good past record. His contention that because appeals against two punishments are pending, the past record should not have been taken into account is not tenable. The competent authority has stated in the order that no withstanding the past record of his service, the misconduct committed by him warranted the said punishment of removal from service. The allegation that the disciplinary authority did not independently apply its mind is not correct. The competent authority has considered all the material and then passed the said order. It is not correct that the appellate authority had not independently applied its mind. It is denied that there is any unfair labour practice. His contention that he is a union leader and an active member of the union is pleaded for the first time. It has no substance. He has committed fraud and dishonesty and has manipulated the record. If the Tribunal finds that the enquiry is defective, it may be permitted to adduce evidence and prove its case. The reference may be rejected.

4. In view of the said pleadings, the following additional issue was raised.

"Whether the second party proves that it has held the domestic enquiry in accordance with law?"

5. It was taken up as a preliminary issue.

6. The second party management examined one witness, viz., the Enquiry Officer and got marked Exs. M-1 to M-13.

7. The first party workman examined himself.

8. The parties were heard on the said issue.

9. By a considered order dated 16-8-88, an order has been passed holding on the said issue that the management has conducted the domestic enquiry in accordance with the law.

10. The parties were called upon to adduce additional evidence, if any and argue on the merits of the case.

11. No further evidence has been adduced by either party.

12. The parties have been heard on the merits of the case.

13. My finding on the point of reference is as follows:

The Management of the Indian Airlines, Bangalore was justified in terminating the services of Shri T. Bholenath, Traffic Assistant with effect from 1-6-86 and that he is not entitled to any relief.

REASONS

14. The chargesheet issued to him is at Ex. M-1. It is dated 18-1-1985. On close analysis of the chargesheet, Ex. M-1, the allegations made against him may be summarised as follows:

- (1) that he was rostered for duty on 18-11-84 in the morning flight from 0600 hours to 1335 hrs;
- (2) It was his duty to check-in passengers of Flight IC 525 (Avro) on Bangalore-Hyderabad sector;
- (3) Two passengers by name Shri A. Ahmed and Shri T. S. Ramadas came late for the flight and by then the counter was closed;
- (4) Then, they went inside the trim cabin and contacted him (the I party workman) for seats in IC 525;
- (5) He, the I party workman asked them to pay Rs. 800 and the same was paid and then he issued two boarding cards, bearing Nos. 2A and 2B for flight IC 525;
- (6) But, he did not issue tickets for the same;
- (7) In the PB list, he has shown 31 passengers on board, whereas the names of Shri A. Ahmed and Shri T. S. Ramadas appeared among the 31 passengers listed by him;
- (8) Since, he had not issued tickets to the said Shri A. Ahmed and Shri T. S. Ramadas, he took two flight coupons of passengers who travelled on Flight IC 404 (Airbus) of 18-11-84 on Bangalore-Hyderabad sector and including their names in the PB list of IC 525;
- (9) The said flight coupons bear the names of Shri Amrit Thakur and Shri Y. K. Goel and they bear Nos. 6659195 and 2100625 respectively;
- (10) He deliberately did not fill up the columns showing the cards taken and destroyed in the emplaning coupons register, guard chits and boarding cards, whereas he had 31 in the column "TNB ex-BLR".

The explanation given by the workman is at Ex. M-2 dated 5-2-1985. The statements he has made therein are as follows:

- (1) He was rostered for checking in the passengers of flight IC 525 on 18-11-84;
- (2) He accepted all the passengers who came for travel with valid documents, until the counter was closed;
- (3) He then prepared the PB list of passengers;
- (4) It is not true that two passengers Shri A. Ahmed and Shri T. S. Ramadas came inside the trim cabin and contacted him for seats in IC 525;
- (5) It is false to say that he asked them rent sum of Rs. 800;
- (6) He denies that they paid Rs. 800;
- (7) It is true that he was issuing boarding cards to all the passengers holding valid documents for travelling in IC 525;
- (8) He had not issued boarding cards to anyone, much less to Shri A. Ahmed and Shri T. S. Ramadas, without receiving valid tickets;
- (9) As per the PAX manifest, 31 passengers were issued with boarding cards and 31 coupons have been accounted for;
- (10) It is denied that he took the flight coupons of passengers who travelled by flight IC 404;
- (11) E-1 and E-2 are valid documents for travel on IC 525 and their coupons endorsed for IC 404 of 18-11-84.

Since seats were available on IC 525 of 18-11-84 and preponing of the journey is permitted, he preponed the journey, on request, accepted the said coupons for travel on IC 525 and allowed the passengers to travel;

- (12) E-3 does not bear any name or identify of the passenger who had travelled in any particular flight. Boarding cards are not valid travel documents to prove identity of passengers. One should possess a ticket to exchange it for boarding cards.
- (13) From E-7 and E-8, it is to be seen that the names listed for IC 525 and IC 404 are totally different;
- (14) E-4 states that ticket counter was closed and that they had paid the money to the duty officer and obtained boarding cards, but ticket counter and cash counter are open throughout the day. Cash transaction cannot take place at an unauthorised place;
- (15) Some persons who are enigmatically disposed towards him are trying to fabricate and concoct a false case against him.

15. The learned counsel for the I party contended that the findings of the Enquiry Officer are perverse. His first contention was that the Enquiry Officer has admitted certain documents, which were not at all admissible in evidence and thus the findings are based on no evidence. The findings of the Enquiry Officer are to be found in report Ex. M-8. Annexure 'A' to Ex. M-8 shows that the management relied upon the evidence of three witnesses and they are MW-1 Shri R. Somasundaram, Traffic Officer, MW-2 Shri V. Rama Kumar, Traffic Assistant, MW-3 Shri T. S. Ramadas, passenger on flight IC 525 of 18-11-84, the documents marked by the Enquiry Officer have been marked as ME-1 to ME-20. The evidence of MW-1, Koshy, the Enquiry Officer discloses that though he has marked the document ME-20 of the bunch of documents marked by this Tribunal as Ex. M-7 series, he had taken the same into account while recording his findings. The learned counsel for the I party contended that the two letters alleged to have been written by Shri A. Ahmed and marked by the Enquiry Officer as ME-16 and ME-17 were not at all admissible in evidence, for the reason that the said Shri A. Ahmed has not been examined and thus the findings are perverse. On the other hand, the learned counsel for the II party contended that the letters of Shri A. Ahmed dated 18-11-84 and 6-1-85, marked as ME-16 and ME-17 have been properly admitted in evidence.

16. In the first instance, supposing that the documents marked as ME-16 and ME-17 have not formed part of the record of the Enquiry Officer, the case has been examined.

17. Since, it is an admitted fact that on 18-11-84 the I party Bholanath had been rostered for duty for Bangalore-Hyderabad sector, it requires to be examined, whether out of the 31 passengers who had travelled in the Avro flight IC 525, the two passengers by name Shri A. Ahmed and Shri T. S. Ramadas are included. In order to distinguish the witnesses examined before the Enquiry Officer, they have been shown as PW-1, PW-2 and PW-3, though the Enquiry Officer has shown them in his report as MW-1, MW-2 and MW-3. In the examination-in-chief of PW-3 Shri T. S. Ramadas, it appears that he had given a duly signed statement dated 10-1-1985 and he was requested to go through the same and say whether he had given that statement. After the witness confirmed that he had given the said statement, it was given to the I party workman for his perusal and he was asked whether he intends to confirm that he had received the same and whether he was satisfied with the said document. The I party Bholanath has stated that he was satisfied and thereafter the statement is marked as ME-15. In Ex. ME-15, PW-3 Ramadas has stated that on 18-11-1984, he had travelled from Bangalore to Hyderabad in IC 525 along with his friend Shri A. Ahmed. He further states that they reported at Bangalore airport quite late for the flight and there was a member of the staff of Indian Airlines at the counter and when he requested him for tickets and to allow them to travel, he told him that the counter had been closed. He has then stated that however he went inside the counter

and contacted another staff sitting with a table and chair and he told him that he would allow them to travel and asked him to pay Rs. 800. He has then stated that he immediately paid the money and he gave him two boarding cards allotting seats 2A and 2B and since they were in a hurry, they immediately proceeded to the security and thereafter to the aircraft. He adds that the staff also advised them to hurry up. He has then stated that after boarding the aircraft, his friend Shri A. Ahmed requested the flight steward as to the procedure for collection of the ticket and he was informed to write to the Station Manager, Indian Airlines, Bangalore. His statement further shows that he was then shown a photograph and then he identified Shri Bholanath as the said person to whom he had paid the sum of Rs. 800 for the tickets and travelled on 18-11-1984. He has further stated that he did not collect the balance money. The enquiry proceedings are at Ex. M-4. With reference to the said statement, as though it is the examination-in-chief, the I party workman was asked to cross-examine the witness. The learned counsel for the I party has cited the authority of W.B. Correya Vs. Deputy Managing Director (Tech.) Indian Airlines, New Delhi (1977 LAB. I.C. Page 1449). The domestic enquiry conducted by MW-1 Koshy has been already held to be valid and the question whether the procedure followed by him by taking on record the earlier statements made by the witness is no longer open. However, in para 5 of the authority, it has been observed that unless the earlier statements are confirmed by the witnesses in the examination-in-chief, they cannot be treated as good evidence. As observed earlier, it is clear from the examination-in-chief of PW-3 Ramadas that he had been requested to go through the statement and confirm whether he had made the same. After he had confirmed his earlier statement ME-15, he has been tendered for cross-examination. In the cross-examination, the I party Bholanath has questioned PW-3 Ramadas whether he travelled on that day alone. The witness has answered that he had travelled on that day along with Shri A. Ahmed. He has been further questioned as to on what seats they were travelling. He has stated that they were travelling on the left-hand seats. He has been questioned as to what were the numbers of the seats. The witness states that he did not remember but he had mentioned about them in his statement. The following questions and answers appearing in his cross-examination throw much light whether he did travel by IC 525 on that day.

Q: With whom you were travelling on that day in question?

A: With Mr. Ahmed.

Q: Were you and Mr. Ahmed travelling together?

A: Yes.

Q: On what seats you were travelling?

A: Left hand side of the aircraft.

Q: You do not remember which seat?

A: I do not exactly remember but I have it in my statement.

Q: Have you both seated on adjacent seats?

A: Yes.

Q: Were both of you together from the time of arrival at the Airport till boarding the aircraft?

A: We both came together to the airport but at the time of requesting you for tickets only I was there and Mr. Ahmed was outside.

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*** *** ***

Q: Subsequently you stated that you contacted another staff at different counter. Can you recollect which is this counter and who is the staff?

A: I went inside where you were there.

*** *** ***
*** *** ***

Q: You have stated that the staff asked you to pay Rs. 800. Can you tell us for what purpose?

A: When I request for seats you asked me whether I had any baggage and when I replied that I did not

have any baggage but my friend had cabin baggage only. Then you asked me whether I had change. I said I had Rs. 800 which I handed over to you and you gave me two boarding cards. Since you did not give me the balance and asked me to hurry up as I was late.

Q : Did you have a ticket ?

A : No. Ticket was not issued.

Q : For what purpose you paid Rs. 800 ?

A : For travel from Bangalore to Hyderabad. Since you gave me the boarding cards and asked me to hurry I thought that the ticket would be given to me later or it would be kept for office record.

**** **** ****
**** **** ****

Q : You stated that you asked clarifications from the flight steward. What were the clarifications given ?

A : He asked me to write a letter to Indian Airlines Bangalore office. In fact my friend asked this question.

Q : You said that the boarding pass are enough as tickets. Then why did you ask for a ticket ?

A : My friend wanted this.
**** **** ****
**** **** ****

Q : Did Mr. Ahmed know that you paid the money without obtaining ticket ?

A : Yes. he knows.

Q : I put it to you that I have given you the boarding pass without collecting the money in a hurry what have to say ? for this ?

A : I have given the money to you.

Q : Have you any evidence in support of your payment ?

A : On taking the amount you have given the boarding cards.

In the cross-examination of PW-3 Ramdas, there is nothing to suggest as to why he should state falsely that on 18-11-1984, he travelled by IC 525 Avro. No motive has been suggested to him. In his statement ME-15, he has stated that boarding card Nos. 2A and 2B were given to him. ME-18 and ME-19 are the cards 2A and 2B. There is no suggestion made to PW-2 Ramdas that these cards were not produced from their custody. As stated earlier, it is an admitted fact that he had been rostered on that day and he had issued these cards, among others to the passengers of the flight IC 525. In para 3 of his explanation Ex. M-2, he has admitted that he had issued the boarding cards to all the passengers of IC 525. Now, there is a suggestion in the cross-examination of Ramdas that he had issued boarding cards to them, but he had not received any amount.

In order to corroborate the evidence of PW-3 Ramdas, the management has examined PW-1 Shri R. Somasundaram and also PW-2 Shri V. Ramkumar. PW-1 Shri R. Somasundaram, the Traffic Officer has stated in his examination-in-chief that the I party Bholanath had been rostered for the said duty on 18-11-84 and the duty roster MW-1 shows the same. The said fact has not been disputed by the I party. Then PW-1 Shri R. Somasundaram has been shown the two coupons bearing Nos. 0582/6659195 of Amrit Thakur and 0584/2100526 of Y. K. Goel. Then he has been asked to explain what do the figures 115, 516, 45 etc. stand for in them. The answer given by him is as follows :—

"Flight coupon No. 1 of 6659195 issued in favour of Thakur Amrit Mr. was travelled Bangalore|Hyderabad by flt. IC-404 dt. 18th November, under Serial No. 45. The remark shown as '516' is a serial number of the boarding card. The next remark 2/26 denotes he carried two pieces of baggage

weighing 26 kgs. Flt. coupon No. 4 of Tkt. No. 2100626 issued in favour of Goel|Y. K. Mr. for travel Bangalore|Hyderabad by flt. IC-404 18th Nov. 1984 under Serial No. 89. There is also another number 115 which is the Serial No. of his earlier flight from Cochin to Bangalore, the date of Travel of Cochin|Bangalore is not clear. The baggage is pooled for these passengers as per the carbon impression on the flight coupon 2100626."

Thereafter, he has been shown the Reservation Chart of IC-404. The PB list of flight IC 404 is at ME-4. The PB list of flight IC 404 is at ME-4. The reservation chart of IC 404 is at ME-5 at Sl. No. 45 there is the name of Amrit and at Sl. No. 89 there is the name of Y. K. Goel. There is no dispute on the point that these two passengers had reserved for IC 404. There is also no dispute that a flight can be preponed and not postponed. In the evidence of PW-1 Somasundaram, it appears that the coupons ME-2 and ME-3 show the boarding card numbers 5 and 6. The P&B list of IC 404. ME-4 shows that their baggage was two pieces of 26 kgs. each and both of them had pooled the same. The said entries are to be found on page 2 of ME-4. PW-1 has further explained that it is the usual practice to write Sl. No. of boarding cards against their names in PB list for the Airbus flights whereas ticket numbers are written for avro flights considering the fact that number of passengers on board will be 48. PW-1 Somasundaram has explained that if a passenger wants to prepone his journey, his name should have been entered in the chart for the preponed flight and since the names and ticket numbers of Thakur and Goel appear in the reservation chart and P.B. list of IC 404, it is obvious that they had not travelled by IC 525. The boarding card control register, page 204 is marked as ME-10 and 205 as ME-11. The last two columns of the entry of flight IC 525 of Bangalore-Hyderabad sector at ME-10 have not been filled up. The entries at ME-10 and ME-11 support the evidence of PW-1 Somasundaram. Then the management has examined PW-2 V. Ramkumar, the Traffic Assistant of flight 404. He was shown his statement and after he confirmed the same, it has been marked as ME-14. In ME-14 PW-2 Ramkumar has stated that he has been rostered for duty for IC 404 on 18th November on Bangalore-Hyderabad sector and he checked-in two passengers by name Mr. Amrit Thakur and Mr. Y. K. Goel with boarding card numbers 5 and 6. He has then stated that the uplifted coupons of these passengers were 6659195 and 2100626. He then confirmed that he had written 5/6 indicating boarding card numbers and 2/26 indicating two pieces weighing 26 kgs. and that they travelled by IC 404 on 18th November Bangalore-Hyderabad sector departing at 1835 hours. He has identified the flight coupons ME-2 and ME-3. The learned counsel for the I party contended that PW-2 Ramkumar has admitted that ME-2 and ME-3 were valid travel documents for flight IC 525 and thus it follows that Amrit Thakur and Y. K. Goel have travelled by IC 525. In the context that the flight can be preponed and not postponed, the statement made by PW-2 Ramkumar does not establish that in fact Amrit Thakur and Y. K. Goel have travelled by IC 525. It was also contended before me that the vigilance officer had shown him only the two coupons ME-2 and ME-3 and not all the coupons of IC 404 and thus it can be very well made out that the said passengers have travelled by IC 525. Since the numbers of these two coupons found place in the P and B list of IC 525, Ex. M-6, the Vigilance Officer had all the good reason to point out only these two coupons. The evidence of PW-2 Ramkumar makes it very clear that the handwriting 5/6 in the said coupons is his. If Amrit Thakur and Y. K. Goel had preponed their flight and had travelled by IC 525 Avro, the said writing 5/6 should have been in the handwriting of the I party workman, but it is not so. No suggestion has been made to PW-2 Ramkumar that he had any ill will towards the workman or that he had manipulated the PB list of IC 404 Ex. M-4 falsely showing the names of Amrit Thakur and Y. K. Goel. The PB list of IC 525. ME-6 is signed by Bholanath. Indeed, it shows the names of Amrit Thakur and Y. K. Goel at the end of the first page. The material question is not whether Amrit Thakur and Y. K. Goel travelled by IC 525 but it is whether Ahmed and Ramdas had Ramdas had travelled by IC 525. Since the evidence of PW-3 Ramdas is not only

supported by that of PW-1 Somasundaram and PW-2 Ramkumar but also the coupons ME-18 and ME-19 the suggestions made by the workman himself in the cross-examination of PW-3 Ramdas and his own statement before the E.O. on 29-7-85 the same shall have to be preferred to the bear entries of the names of Amrit Thakur and Y. K. Goel in the PB list of IC 525 ME-6. The learned counsel for the I party contended that the management did not examine the said Amrit Thakur and Y. K. Goel before the Enquiry Officer and thus it was not proved that they had not travelled by IC 525. The PB list of IC 525, Ex. M-6 is admittedly prepared by the I party Bholanath. An admission cannot be pressed into service in favour of the party making the same. Secondly a mere inference that may emerge from ME-6 cannot outweigh the statement made by PW-3 Ramdas by appearing before the Enquiry Officer in the presence of the workman and tendered himself for the cross-examination. Thirdly there is no suggestion to Ramdas that he had any motive to depose against the workman. Finally, there is the suggestion of the workman himself to PW-3 Ramdas that he had himself given the boardings cards ME-18 and ME-19 to them but only he had not taken the amount. The learned counsel for the II party submitted that in those days the members of the staff such as the I party workman and PW-2 Ramkumar used to do overtime work till 9.30 p.m. Nothing has been pointed out from the record that the I party workman had already handed over his PB list of IC 525 to the Traffic Officer before the departure of IC 404. However, the first material question is not whether the flight coupons ME-2 and ME-3 have been uplifted and the PB list Ex. ME-6 of IC 525 had been manipulated, but it is whether Ahmed and Ramdas had travelled by IC 525 or not. The load and trim sheet of IC 525, ME-8 does not help the I party workman since it does not contain the names of the passengers. The other particulars of Ex. ME-8 do not indicate that Ahmed and Ramdas had not travelled by IC 525. All the flight coupons of IC 525 and 404 have been produced at ME-12 and ME-13.

4. The findings of the Enquiry Officer that the I party workman had issued the boarding cards ME-18 and ME-19 by taking Rs. 800 from PW-3 Shri T. S. Ramdas is thus supported by the evidence of PW-1, PW-2 and PW-3 and the documents at Exs. ME-1 to ME-15, and ME-18 and ME-19. On going through the said evidence, it cannot be said that no reasonable person could have arrived at the conclusion that Ahmed and Ramdas had in fact travelled by the Avro IC 525 on 18-11-84, by paying Rs. 800 to the I party Bholanath and getting two boarding cards from him, bearing seat numbers 2-A and 2-B (ME-18 and ME-19).

5. The learned counsel for the II party strongly argued that the Enquiry Officer has properly admitted two letters of Shri A. Ahmed marked as ME-16 and ME-17. Even if these two documents are eschewed from evidence, the record shows that the management had established the charge against the I party workman.

6. When the chargesheet was issued to him as per Ex. M-1 the workman has been informed that the management intends to support its case by 9 documents and that the copies of the same had been enclosed to the chargesheet in his reply. Ex. M-2 the workman had stated that his explanation is with reference to the said chargesheet, Ex. M-1. From para 5 to 8 of his explanation Ex M-2 he had made reference to E-1 to E-8 etc. The reference to E-1 etc. is to the documents shown by the management in the chargesheet Ex. M-1 at Sl. numbers 1 to 9. The fourth and fifth documents of Ex. M-1 are the letters of A. Ahmed dated 18-11-84 and 6-1-1985 respectively. The management produced these two letters before the Enquiry Officer and the Enquiry Officer has marked them as ME-16 and 17 corresponding to document Nos. 4 and 5 shown in Ex. M-1. In para 8 of his explanation, Ex. M-2 the workman has stated that the fourth document, (the letter of Ahmed dated 18-11-84) itself states that the ticket counter was closed and they had paid the money to the Duty Officer and had obtained the boarding cards and that cash transaction cannot take place in an unauthorised place. While producing these two letters of Ahmed before the Enquiry Officer, the management has enclosed the postal covers in which these two letters had been received. Section 114 illustration (e) of the Indian Evidence Act gives rise to a presumption that official acts have been regularly performed.

Section 114 itself states that court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The postal cover of ME-16 bears the postal seals of 24-11-84. The postal cover of Ex. ME-17 bears the date 9-1-85. Both the covers show the address of A. Ahmed and they have been addressed to the Station Manager, Indian Airlines, Bangalore. ME-16 makes a reference to the boarding passes 2-A and 2-B given to them by the person who had taken money from Ramdas. Along with the letter, ME-17, Shri Ahmed had enclosed the boarding passes and thus only thereafter the management had no reason to doubt about the statements of Shri Ahmed that himself and Ramdas had travelled by IC 525 on 18-11-84. At Sl. No. 3 in the chargesheet, Ex. M-1 the management had stated that it intended to rely upon the boarding cards 2-A and 2-B. The copies of the same had been supplied to him. In addition to these facts and circumstances, the workman has cross-examined PW-3 Ramdas with reference to the enquiry made by Ahmed and Ramdas with the members of the staff in the flight whether it was a steward or the airhostess. The workman has questioned Ramdas even regarding the seats which they had occupied and as to how both of them had moved about in the airport and also in the plane. Strict rules of Evidence Act are not applicable in a domestic enquiry. The learned counsel for the II party has placed reliance on the case of State of Haryana and Another Vs. Rattan Singh (1977) 2 Supreme Court Cases Page 491) to support his contention that in a departmental enquiry strict rules of Evidence Act are not applicable but there should be fair play and adherence to the principle, of natural justice. From the facts discussed above, I find that there was all the fair play and the management has acted in a fair and reasonable manner and that the Enquiry Officer has conducted the enquiry according to the principles of natural justice. Under such circumstances, it cannot be said there is illegality committed by the Enquiry Officer in admitting ME-16 and ME-17, the two letters of Shri A. Ahmed. The learned counsel for the I party contended that the copies of the envelopes under which ME-16 and ME-17 were sent to the management had not been supplied to the workman and thus he had no notice about the same. These two letters along with the envelopes have been produced before the Enquiry Officer on 29-7-1985 and the Presenting Officer made a submission before the Enquiry Officer that on due checking, it was found that the passenger was out of station and he requested the Enquiry Officer to take the letters on record. Thereafter the Enquiry Officer has shown these documents to the I party and asked him whether he intends to confirm them and whether he had received the copies of the same and that he should examine the veracity of the same. Then the workman had stated that he had received the copies and the documents tallied with whatever the management had supplied. Thereafter, the Presenting Officer has placed before the Enquiry Officer the boarding cards 2-A and 2-B and then the Enquiry Officer has put a question to the I party workman and there is the following recording by the Enquiry Officer.

PO : I place before you letters dated 18-11-84 and 6-1-85 (together with postal covers) written by Shri A. Ahmed, passenger of flight IC-525 of 18th November, 1984 which are self-explanatory. On checking I found that the passenger is out of Station and it will unnecessarily prolong the enquiry proceedings I therefore request you to take the above two letters on record.

EO : to Def : The two letters dated 18-11-84 and 6-1-85 from Shri A. Ahmed are being shown to you. You may confirm whether you have received copies of the same and verify the veracity of the same.

Def. : Received the copy and document tallies with whatever you have supplied.

EO : The letter dated 18-11-84 from Shri A. Ahmed is taken on record and marked ME-16. The letter dated 6-1-85 from Shri Ahmed is taken on record and marked ME-17.

PO to EO : I now place before you two boarding cards bearing seat Nos. 2-A and 2-B (as referred in letters marked as ME-17) issued by Shri Bholanath on

18th November, 84 for fit. IC-525 to Shri Ramdas which fact was also mentioned by the Defendant during cross-examination. I request you to kindly peruse the boarding cards and take the same on record.

EO to Def : The two boarding cards for fit. IC-525 of 18th November 84 bearing seat Nos. 2-A and 2-B are being shown to you. You may peruse the same and confirm whether you have received copies and check the veracity.

Def : I confirm that these are the two boarding cards issued by me for fit. IC-525 of 18th November 1984 along with the other boarding cards. I have received photostat copies of the same.

EO : The two boarding cards mentioned above are taken on record and marked ME-18 and ME-19.

The aforesaid proceedings of the Enquiry Officer dated 29-7-1985 further show that the workman contended that the boarding cards 2A and 2B had been issued by him for flight IC 525 on 18-11-84 along with other boarding cards and he had received the photostat copies of the same. Giving sufficient opportunity to the workman and only when he had admitted that he had issued the boarding cards, the Enquiry Officer has marked the boarding cards and the two letters of Ahmed. Thus, it cannot be said that the Enquiry Officer has committed any error of law in admitting the two letters of A. Ahmed and marking them as ME-16 and ME-17.

PW-2 Ramkumar has stated in his statement ME-14 that he has written 5/6, indicating boarding card numbers and 2/26, indicating two pieces weighing 26 kgs. There is no suggestion put to him that the writing 5/6 or 2/26 in ME-2 and ME-3 are not in his handwriting. On the contrary, it has been suggested to him in the cross-examination that since he was on duty on that day, as a normal gesture shown to his colleague, he has checked in the passengers for the flight for which he had not been rostered. PW-2 has denied the suggestion. If Thakur and Goel had prepared and travelled by IC-525, it has remained unexplained as to how there can be the writing of PW-2 Ramkumar, as 5/6 and 2/26 in ME-2 and ME-3 and there is a categorical statement of PW-2 that he did not help Bholanath for checking for IC-525.

7. In the commentary under the heading perversity in the Law of Industrial Disputes by O.P. Malhotra, Fourth Edition, Volume 2 page 875, it has been stated that a finding recorded in a domestic enquiry can be characterised as perverse only if it is shown that such a finding is not supported by any evidence at all or it is entirely opposed to the whole evidence adduced before it or no reasonable person could have given the finding on the basis of the evidence on record. If the conclusion of the Enquiry Officer is reasonable, then the Tribunal will not be justified in interfering with the same on obtruse and abstract basis. It has been further stated that the court should bear in mind the finding which may appear to be not supported by sufficient evidence or may be based on inadequate or unsatisfactory evidence, but that in such cases the jurisdiction of the Tribunal does not extend to set aside such a finding. It has been further stated that a wrong finding is not necessarily a perverse finding and that a finding cannot be described to be perverse merely because it is impossible to take a different view on the evidence. On page 876, it has been further stated that in deciding the question as to whether a particular conclusion of fact is perverse or not, the Industrial Tribunal would not be justified in weighing the evidence for itself and determining the question of perversity of the view arrived at by the Enquiry Officer in the light of its own findings on the question of fact. The facts placed on record require to be examined in the light of the aforesaid principles.

8. Ex. M-9 is the second show cause notice sent to the I party workman after the Enquiry Officer gave his report. In Ex. M-9 dated 17-4-86 the I party workman has been informed that the Enquiry Officer had given his findings and that a copy of the enquiry proceedings had already been given to him and along with the letter copy of the report of the Enquiry Officer was enclosed and that in view of his previous record

as shown therein the disciplinary authority proposes the punishment or removal from service. Ex. M-10 dated 24-6-86 is the reply given by the I party in regard to the procedure of the enquiry adopted by the Enquiry Officer and also in relation to the appreciation of evidence on record, the I party workman had an opportunity to put forth his case in writing and he has accordingly filed his written arguments as per Ex. M-6. Then he had another opportunity when the second show cause notice was issued to him as per Ex. M-9. In the written arguments at Ex. M-6, the contention raised by the workman was that the statement made by Ramkumar that he had uplifted the coupons 6659195 and 2100626 or that he (Ramkumar) had allowed the said passengers to travel on IC 404 should not be accepted, for, he had made the said statements blindly. This contention was not supported by record. The management had produced the entire bunch of coupons of IC 404 at Ex. ME-12. It cannot be forgotten that no motive has been suggested to Ramkumar as to why he should depose falsely that Thakur and Y. K. Goel had travelled by IC 404. In Ex. M-6, the I party had further pleaded that the Vigilance Officer had deliberately not shown the PB list to Ramkumar, because there were two coupons with similar names in question. Nowhere, it has been pleaded or suggested to any witness or put forth in the oral submission made before this Tribunal that there were two sets of persons by the same name Amrit Thakur and Y. K. Goel and one set of them had travelled by IC 525 and another set in the evening by IC 404. The evidence of PW-1 Somasundaram that only two coupons were missing from the total number of coupons of IC 404 is consistent and compative only with the proposition that the two coupons of Amrit Thakur and Y. K. Goel had been lifted from the flight coupons of IC 404. In the written arguments, the I party workman had contended that Ramkumar had admitted that Sl. No. 5 and 6 of the Avro flight corresponded to the boarding cards of seat Numbers 2A and 2B. Then it has been contended in the written arguments Ex. M-6 that the PB list of IC 525 also suggested that Goel and Thakur had travelled by IC 525. It has been further argued in Ex. M-6 that if Amrit Thakur and Y. K. Goel had travelled by IC 404, how can the PB list of IC 525 show their names and correct weight in the trim sheet. In Ex. M-6 there is a further submission that since preponing was permitted, he had accepted Amrit Thakur and Y. K. Goel checked-in those passengers for IC 525, since the actual capacity of the avro did not exceed and therefore their names appear in the PB list of the Avro. All these contentions proceed, from a wrong approach of looking at the case whether Amrit Thakur and Y. K. Goel had travelled by Avro IC 525. The correct approach to the case shall have to be whether the I party management has proved that A. Ahmed and T. S. Ramdas had travelled by IC 525 and whether it is the I party workman who had permitted them with boarding passes 2A and 2B, having taken Rs. 800. I cannot but reiterate that the PB list of IC 525 Ex. ME-6 cannot be pressed into service in favour of the workman, for the simple reason that an admission made by a party cannot be used in his own favour and there is no dispute that ME-6 is the document prepared and signed by Bholanath. The aforesaid contentions of the I party workman raised in Ex. M-6 were therefore of no avail.

9. Neither in the written arguments Ex. M-6 filed before the Enquiry Officer nor in the reply given by the workman as per Ex. M-10 to the second show cause notice, there is any contention or allegation against the Enquiry Officer that recording the proceedings of enquiry and evidence is not correct. The suggestion made to PW-3 Ramdas that the I party workman had himself given the boarding cards 2A and 2B, ME-18 and ME-19 but that he had not taken any money and his statement before the Enquiry Officer recorded on 29-7-85 (vide page 23) that he had issued the said two boarding cards for IC 525 on 18-11-84 have not been challenged till today. The fact that these two boarding cards are coming from the possession of the passengers A. Ahmed and PW-3 Ramdas is wholly inconsistent with the case of the I party workman that they had not travelled by the Avro IC 525. Similarly neither in the Ex. M-6 nor in Ex. M-10 there is any allegation against PW-2 Ramkumar to suggest any motive as to why he should contradict the case of the I party workman that Amrit Thakur and Y. K. Goel had not travelled by IC 404. The appreciation of evi-

dence by the Enquiry Officer cannot therefore be said to be erroneous.

10. The learned counsel for the I party contended that ME-6 of Ex. M-7 series shows the names of the passengers who had travelled by IC 525 and since they show the names of Amrit Thakur and Y. K. Goel, it is patent that the finding of the Enquiry Officer that they had travelled by IC 404 is perverse. It was then contended that the trim sheet of IC 525, ME-8 shows the weight and other particulars of the Avro flight corresponding to the entries of ME-6 and thus there is additional evidence to prove that both of them had not travelled by the airbus IC 404. It was further contended that in ME-4, the PB list of IC 404 ticket numbers are also shown and therefore it cannot be said that 5/6 show only the seat numbers. The first two contentions have been repelled by the management by the submission that P.B. list of IC 525, ME-6 is prepared by himself and that it does not prove that Amrit Thakur and Y. K. Goel had not travelled by IC 404. ME-8, the trim sheet of IC 525 does not give the detailed particulars such as coupon numbers or names of passengers and does not help him. The contention that ME-4, the P.B. list of IC 404 shows coupon numbers also and that 5/6 cannot lead to a conclusion that Amrit Thakur and Y. K. Goel had travelled at seat numbers 5 and 6 of IC 404 cannot be accepted for the reason that on a bare look at ME-4, it would be obvious that only seat numbers are shown and only in a few cases coupon numbers have been described. The evidence of PW-1 Somasundaram and PW-2 Ramkumar has not been disputed and there is no challenge to the fact that because the passengers on IC 404 airbus will be considerably quite more, it will not be practicable to write the detailed coupon numbers. The learned counsel for the I party submitted that the PB lists and other documents had been secured from the Delhi Office and in that event the forwarding letters ought to have been produced. It was also argued that ME-4 is not a complete document and should not have been relied upon. In reply, the learned counsel for the II party submitted that at no point of time, the I party workman sought for the production of the covering letter of any document produced in the enquiry and that no objection was taken for the production and admission of ME-4. In my view, the contention raised by the I party cannot be accepted, since nothing prevented the workman to challenge the production of those documents before the Enquiry Officer. The learned counsel for the I party strongly contended that the management ought to have examined the said Thakur and Y. K. Goel and for not doing so, the Enquiry Officer ought to have held that the management had not proved its case. The submission proceeds from the assumption that the management is expected to prove that Amrit Thakur and Y. K. Goel had not travelled by IC 525 and that they had travelled only by IC 404. The management was required to prove only whether A. Ahmed and T. Ramdas travelled by IC 525 by paying Rs. 800 to the I party. The contention holds no water. The learned counsel for the I party strongly contended that in ME-16, it has been stated that one Ramdas had travelled along with A. Ahmed and that money had been paid to the duty officer and thus there is a material contradiction in the evidence of Ramdas and the letter of Shri A. Ahmed, ME-16. The evidence of PW-3 Ramdas explain in great detail as to whom he had contacted and whether Shri A. Ahmed was present when PW-3 Ramdas paid the sum of Rs. 800 to Bholanath. PW-3 Ramdas has time and again reinforced his statement in the cross-examination that Shri A. Ahmed was outside when he paid Rs. 800 to Shri Bholanath and that it was Shri Bholanath who gave them the boarding cards 2A and 2B and asked them to hurry up. The alleged contradictions have been properly explained by PW-3 Ramdas and I do not find that there is any lacunae in the application of the principles of natural justice and rules of appreciation of evidence by the Enquiry Officer. It was contended that the I party workman was wearing a name plate and if any money had been paid to him, his name should have found place in ME-16 and or ME-17 and that there is a contradiction on the point whether the passengers had made enquiries with the steward or air hostess. It will be too much to expect a passenger who was in a hurry to reach Hyderabad at the earliest to examine the name plate of the person and remember it, in anticipation of some difficulty that may ensue and then point out the said name in such letters. The submission is far fetched and cannot be accepted. There is no

contradiction at all on the point whether they had enquired with the steward or airhostess. What emerges from the evidence of Ramdas is that in the enquiries made by Ahmed, he was told that a letter may be addressed to the Station Manager, Indian Airlines, Bangalore to get the tickets and it is obvious from ME-16 and ME-17 themselves that Shri A. Ahmed required the tickets in order to claim reimbursement.

11. The enquiry officer has set forth the evidence of PW-1 Somasundaram, PW-2 Ramkumar and PW-3 Ramdas on pages 3 to 10 of the report, Ex. M-8. Then he has analysed the evidence and discussed about it on pages 10 to 14. The Enquiry Officer has taken into account the documents placed before him and has discussed the same with reference to the oral evidence produced by the management. On going through the Report, Ex. M-8, I find that it is unassailable.

12. Ex. M-11 is the order of dismissal dated 28-5-1986. In para 3 of Ex. M-11, it has been stated that withstanding the past record of his service, the misconduct committed by him was such that the punishment or removal from service should be imposed on him. Then the order of removal from service has been passed against him. The learned counsel for the I party strongly contended that in the second show cause notice, Ex. M-9, the management had put forth five previous instances showing about the punishments imposed on him on earlier occasions, but the management has not proved them and that the order of dismissal cannot be sustained. It was further submitted that in two cases, viz., case of reduction in time scale and case of reduction in basic pay, appeals were pending and that about the other three cases, the charges were not proved. It was further submitted that the disciplinary authority had taken into account the previous cases which had not been established and thus the order of dismissal may be set aside.

13. On the other hand, the learned counsel for the second party argued that the disciplinary authority has specifically stated in the order of dismissal Ex. M-4 that notwithstanding the previous record the present misconduct is of such a nature that it warranted the punishment of removal from service. In order to bring home his contentions, the learned counsel for the I party cited the following cases :

- (1) The State of Mysore Vs. K. Manche Gowda (AIR 1964 Supreme Court, Page 506).
- (2) The Managing Director, U.P. Warehousing corporation and Others Vs. Vijay Narayan Vajpayee. (AIR 1980 Supreme Court Page 840).
- (3) Vijay Singh Yadava, Vs. The State of Harvana and others. (1972 LAB I.C. Page 713).
- (4) A. L. Kalra, Vs. The Project and Equipment Corporation of India Ltd. (AIR 1984 Supreme Court Page 1361).

In the first authority the principle laid down is that under Article 311 (2), a Government Servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him but also to establish that the punishment proposed to be imposed is either not called for or excessive.

14. In the second authority, it has been laid down that an order dismissing an employee must be supported with reasons. In the present case the Enquiry Officer has given sufficient reasons to support his findings.

15. In the third authority cited above, it has been enunciated that dismissal of an employee in total breach of the rules of natural justice is illegal. In the case of A. L. Kalra, it has been stated that as regards employees in the public sector a distinction between protection under Part III and Part XIV is, however, of no significance.

16. The learned counsel for the II party has submitted that the order of removal of service has been passed notwithstanding his past record. In my view, taking into account

the fact the management has proved that the I party workman has taken a sum of Rs. 800 from PW-3 Ramdas and had given them boarding cards 2A and 2B without accounting for the said amount is a misconduct for which alone the punishment of dismissal of service is just and reasonable. At Ex. M-12, the II party has produced the standing orders concerning discipline and appeals. Clause 16(4) states that theft, fraud or dishonesty in connection with the business or property of the corporation is a misconduct. Clause 16(5) states that taking or giving bribes or any illegal gratification is a misconduct. The chargesheet shown that he had committed an act of misconduct punishable under Clause 16(4). The findings of the Enquiry Officer, the second show cause notice and the order of dismissal, all proceed to make out and establish as to how the I party workman is guilty of misconduct punishable under Clause 16(4). Taking into account the facts and circumstances of the case, I am of the view that the order of dismissal, which has been passed, not withstanding the alleged acts of his previous misconduct is sustainable, for the reason that the present act of misconduct itself is of such a grave nature that the management cannot be asked to retain him in service any longer. In my view, it is not a fit case to invoke the provisions of Section 11-A of the I.D. Act.

17. In the result, an award is passed to the effect that the management of Indian Airlines, Bangalore was justified in removing Shri T. Bholanath, Traffic Assistant from service with effect from 1-6-1986 and that he is not entitled to any relief.

(Dictated to the Personal Assistant taken down by her, got typed and corrected by me.)

B. N. LALGE, Presiding Officer
[No. L-11012/22/86-D.II(B)/III(B)]

का. प्र. 3566—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स कल्याणपुर साईम सीमेंट वर्क्स लि. के प्रबन्धन में सम्मिलित नियोक्तों और उनके कर्मचारियों के बीच, अनुसूच में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, न. 2 धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8/11/88 को प्राप्त हुआ था।

S.O. 3566.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Kalyanpur Lime Cement Works Limited and their workmen, which was received by the Central Government on the 8-11-88.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 75 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

PARTIES:

Employers in relation to the management of M/s. Kalyanpur Lime Cement Works Ltd., and their workmen.

APPEARANCES:

On behalf of the Workmen: Shri B. Joshi, Advocate.

On behalf of the Employers: Shri J. P. Singh, Advocate and Shri G. Prasad, Advocate.

STATE: Bihar.

INDUSTRY: Limestone.

Dated, Dhanbad, the 31st October, 1988

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of

the I. D. Act, 1947 has referred the following disputes to the Central Government Industrial Tribunal No. 1, Dhanbad vide their Order No. L-29011/55/84-D.III(B), dated, the 25th April, 1985. But subsequently the said disputes were transferred to this Tribunal from Central Government Industrial Tribunal No. 1, Dhanbad vide Ministry's Order No. L-11025 (5)/85-D.IV(B) dated 14-1-86.

SCHEDULE

"Whether the action of the management of M/s. Kalyanpur Lime and Cement Works Ltd., P.O. Banjari, Distt. Rohtas in terminating the services of the seven workmen (apprentices) namely S/Shri (1) Harendra Singh, (2) Babban Singh, (3) Rajendra Prasad Singh, (4) Abinash Singh, (5) Akhilesh Singh, (6) Krishna Murari Sinha, (7) Sanjoy Kumar Singh working in limestone quarries with effect from 11-6-1983 is justified? If not, to what relief the workmen are entitled?"

2. "Whether the action of the management of M/s. Kalyanpur Lime and Cement Works Ltd., P.O. Banjari, Distt. Rohtas in dismissing Sri Surjdeo Pandey Helper Quarry Workshop and Garage with effect from 1-9-83 is justified. If not, to what relief the workman is entitled?"

The case of the workmen in respect of Item No. 1 of the schedule of the order of reference is that Kalyanpur Lime and Cement Works Ltd. (hereinafter referred to as Kalyanpur Lime Cement) is a private limited company having its works office at Kalyanpur, P.O. Banjari, District Rohtas. It has three cement plants and it has its captive lime stone mines along with the quarry workshop and Garage. The sponsoring union namely the Kalyanpur Mazdoor Panchayat is a registered trade union functioning in the said establishment since long. The concerned 7 workmen were appointed by the management of M/s. Kalyanpur Lime Cement Works as trainee mate apprentices on a monthly stipend of Rs. 200 per head as per contract between the individual concerned workmen and the management dated 10-6-80, 11-6-80 and 19-6-80. After the concerned persons successfully completed 2 years of their period of apprenticeship, their period of apprenticeship was further enhanced with one more year with increased stipend of Rs. 350 per month. The concerned persons were to be governed by the certified standing orders (quarry) of the management. According to clause 6 of the contract they were also to get 15 days casual leave and 15 days sick leave per year. After the concerned persons joined they were posted by the management in different sections of the lime stone quarry. They were explained duties and responsibilities which they had to perform by the old mining mates and the Foreman of the respective sections of the quarry. The concerned persons being educated picked up the work and responsibilities within a week and hereafter they began to perform the duties of mining mates independently. They used to set jugar of works required both for limestone and for removing over burden, they used to take attendance of workmen in the attendance registers, they used to prepare challans on printed forms duly signed by them, they used to prepare daily reports on printed forms with the detailed particulars signed by them. The standing orders applicable to the workmen of the management were also applicable according to clause 6 of the contract to the concerned persons and hence the concerned persons worked as apprentice workmen of the management in terms of clause (1) of the Standing Orders as well as in terms of Section 2(s) of the I. D. Act. The service records of the concerned persons were clean and their duties and performance was without any blemish but even then they were not confirmed as permanent inspite of several approaches made by the concerned workmen in person. The management did not confirm them only with a view to exploit them. The management having got scent of the fact that the cement Arbitration board was going to make out its award by 11-7-83 in which apprentices employed by the cement management (not covered by the Apprentices Act) were also to get the benefits of the said Award and hence planned cleverly to terminate the services of the concerned persons before the declaration of the said Award to save itself from the liabilities of the same in respect of the concerned persons. According to the said

plan the management suddenly terminated the services of the concerned persons with effect from 11-6-83 without taking permission from the Cement Arbitration Board under the provisions of Section 33 of the I.D. Act. After termination of their services the concerned persons approached the Secretary of Kalyanpur Mazdoor Panchayat Banjari for taking up their case with the management and other authorities. The Secretary of the Panchayat sent a demand letter dated 20-10-83 to the management for reinstatement of the concerned persons but the management did not give any reply. Thereafter the said union raised an industrial dispute before the ALC(C) Patna vide letter dated 20-2-84 and thereafter on failure of conciliation the present reference was made to the CGIT No. 1, Dhanbad. The concerned persons were not appointed under the Apprentices Act, 1961 and hence they are workmen of the management. In fact the concerned persons were appointed as Probationers to be made permanent and the concerned persons should be deemed to be permanent workmen as soon as they completed 6 months of service. The concerned persons are company's workmen and hence the termination of their services without complying with the provisions of Section 33, 25F(b) or Section 25(N)(B) of the I.D. Act by the management is void and illegal. It is therefore prayed on their behalf that the concerned persons should be reinstated with back wages and other consequential benefits.

The case of the workmen in respect of item No. 2 of this schedule of reference is that the concerned workman Shri Surajdeo Pandey was in permanent employment of the management of Kalyanpur Lime Cement Works in the quarry workshop and Garage as helper. On 1-8-82 the said concerned workman was on duty from 1.30 A.M. to 10.00 A.M. At about 8 A.M. on that day when there was tiffin he went to the quarter of Shri Bijoy Kr. Pandey where he was residing or taking his break-fast. Soon after taking breakfast, the concerned workman fell serious pain in his chest. Being disturbed he at once started for his native village in Navinagar P.S. & Distt. Aurangabad living on the western side of the river Sone. After reaching his village home the concerned workman went to a Homeopathic doctor Vishwanath Pandey of his village who after examining him advised him to go to Patna for proper treatment and the doctor granted a certificate dated 1-8-82 which was sent by the concerned workman by Regd. post to the management. As advised by the Homeopathic doctor the concerned workman went to Patna for proper treatment of his ailment and stayed with his own elder brother Shri Rajdeo Pandey who was in service in CID. The concerned workman was treated by the doctor Fani Bhusan Lal, Incharge Chest Clinic Gardaniabagh hospital, Patna who advised him to take 2 months rest with effect from 3-8-83 vide his certificate dated 20-9-82. In the meantime the management issued chargesheet-cum-suspension letter dated 2-2-82 to the concerned workman. The said letter was received by the concerned workman. The concerned workman replied to the above chargesheet-cum-suspension letter vide his letter dated 21-2-82 denying the charges (a) theft of drum and (b) unauthorised absence from the place of work by submitting copy of medical certificate dated 1-8-82 and 20-9-82 as well as photo copy of the Cash Memo dated 27-7-82 of the General Auto Stores, New Market, Patna. The management after holding enquiry into the charges issued order of dismissal vide letter dated 1-9-83 to the concerned workman.

The concerned workman approached the union with a request to take up his case with the management. The union wrote a letter dated 18-11-83 to the Personnel Manager of the Kalyanpur Lime Works but no reply was received. Thereafter the union raised industrial dispute before the ALC(C) Patna. The ALC(C) held the conciliation which ended in failure and thereafter the present dispute was referred for adjudication. The dismissal of the concerned workman as per management's letter dated 1-9-83 is illegal improper and unjustified. The concerned workman had produced Cash Memo of the General Auto Stores, New Market, Patna for purchase of the alleged stolen drum by his elder brother Shri Rajdeo Pandey. The said document was duly proved by Shri Rajdeo Pandey in his evidence before the Enquiry Officer. The concerned workman produced medical certificate dated 1-8-82 in respect of his sudden illness due to serious pain in his chest which showed justification for his absence from 8 A.M. to 10.00 A.M. on 1-8-83 from the place of his work. The charge of

unauthorised absence on the said date is therefore not justified. As regards the charge of unauthorised absence on subsequent dates the concerned workmen produced medical certificate before the Enquiry Officer. Accordingly the dismissal of the concerned workman was not justified. The finding of the enquiry officer was perverse as none of the witness supported the charge of theft of drum by the concerned workman from the possession of the management. There was no material before the Enquiry Officer on record of the enquiry proceeding to establish theft and unauthorised absence of the concerned workmen. On the above facts it is prayed on behalf of the concerned workman, that the dismissal with effect from 1-9-83 by the management was unjustified and that the management be directed to reinstate him with back wages and other consequential benefits.

The case of the management is that transfer of the present reference from CGIT No. 1, Dhanbad to CGIT No. 2, Dhanbad is bad in law and that CGIT No. 2 has no jurisdiction to decide the case. The concerned persons were apprentices/trainee mates and were not workmen as defined under Section 2(s) of the I.D. Act. As the concerned persons were apprentices/trainees, the provision of any law with regard to labour does not apply to said apprentices. Any dispute between the employer and the apprentices arising out of contract of apprenticeship has got to be referred to Advisor under the apprentices Act, 1964. The reference therefore is not maintainable under the industrial dispute Act. The concerned workmen were not employed to do any monthly unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. They were being paid stipend during the period of their apprenticeship and the said stipend cannot be said to be wages, hire or reward. Initially they were employed on their request for a period of 2 years as stipulated in the contract for apprenticeship and it was further extended by one year after expiry of the period of two years and after completion of 3 years apprenticeship training there was no renewal of contract of employment. The concerned persons were not the employees of the management and therefore there was no question of the termination of their service. They were only trainees appointed to learn the trade for a fixed period as stipulated in their respective term of contract for apprentice/trainee. A learner or trainee cannot claim for employment under the management after the period of their training being over. The concerned persons were required to pass an examination of mates examination as required under regulation 18 of the Metalliferous Mines Regulations, 1961 to enable them for being employed as mate in any mine. The concerned persons had not qualified and passed the mate examination and hence they are not eligible for employment as mates in any metalliferous mines. In all matters of conduct and discipline apprentice/trainee are governed by the rules and regulation applicable to the employees of the establishment. The provision of labour law do not apply to such apprentices/trainees. On the above facts it is submitted on behalf of the management that the concerned persons are not entitled to be employed by the management and their services were not terminated by the management.

The case of the management in respect of item No. 2 of the schedule of the order of reference is that on 1-8-82 the concerned workman Surajdeo Pandey was on duty in the quarry workshop and garage from 1.30 A.M. to 10 A.M. with half hour break for breakfast from 8.00 A.M. to 8.30. On that day, the Watchman/Security Guard on duty suspected some foul play in and round the garage in early morning at about 4 A.M. and suspected that some miscreants had committed theft company's property in and around the garage. The security Guard investigated the matter and incourse of his patrolling entered the neighbouring quarter which was allotted to Shri Bijoy Kumar Pandey an employee of the company. At that time Shri Bijoy Kumar Pandey was present in the quarter and one outsider Premnath Dubey said to be a relative of the concerned workman was also present in the quarter. The security guard saw a big empty drum in that quarter which looked similar to the drum of the company which were lying in and around the garage where the concerned workman was on duty. The Security guard asked Shri Bijoy Kumar Pandey about the drum whereupon Bijoy Kumar Pandey replied that Shri Surajdeo Pandey, (the concerned workman) had brought the drum between 4 A.M. and 4.30 A.M. and had kept it there. The security guard reported the matter to his superior who latter visited Bijoy Kumar Pandey's

quarter and found the drum there. The guards thereafter reported the matter to the Welfare Officer Shri S. M. Jha at 7.30 A.M. The Welfare Officer asked the security guards to bring the drum to gate No. 4 and also to bring Shri Bijoy Kumar Pandey, the inmate of the quarter and other inmate of that quarter. The security guard then took Shri Bijoy Kumar Pandey and Shri Prem Narain Pandey along with the drum to gate No. 4 and reported to Shri S. M. Jha that Shri Surajdeo Pandey was not present in the quarter. The welfare Officer sent Shri Kamta Prasad Singh Jamdar of the security section to call Shri Surajdeo Pandey from the garage at about 8.00 A.M. Shri Kamta Prasad Singh returned to the Welfare Officer and reported to him that Shri Surajdeo Pandey was not present in the garage when he went there to call him at about 8.15 A.M. The concerned workman was reported not to have returned to his duty after the breakfast hour and did not report even at 10.00 A.M. when his shift ended on that day. The concerned workman had left his place of duty without prior permission and removed the drum from the garage and stored it in the quarter of Shri Bijoy Kumar Pandey and he again remained absent from duty from 8.00 A.M. The concerned workman did not return to the duty thereafter and unauthorisedly remained absent from work for over 16 days. A show cause-cum-suspension letter was issued to the concerned workman alleging the misconduct of stealing the company's drum and leaving work without permission and unauthorisedly remaining absent. The concerned workman had left and went home across the Sone river without reporting to his superior or without informing anyone. The concerned workman informed by his letter that he was sick and was under the treatment at Gardanibagh hospital Patna which was received on 10-8-87. The concerned workman did not explain as to why he did not report about his alleged sickness to his superior and did not report for his treatment before the company's doctor. He did not explain as to why he had not applied for leave for absence and did not explain the circumstances under which he had left the place of duty during his working hours and left Banjari for his village home.

The concerned workman replied to the show cause which was scrutinised by the management and was found to be unsatisfactory. The management decided to hold an enquiry into the charges. The concerned workman fully participated in the enquiry along with his co-worker. He was allowed to cross-examine the management's witnesses and also to adduce witnesses in his defence. After completing the enquiry the enquiry officer submitted his enquiry report holding that the charges against the concerned workman were established. The management considered the enquiry report, enquiry proceeding and all relevant papers and thereafter agreeing with the finding of the enquiry officer ordered for the dismissal of the concerned workman with effect from 1-9-83. The dismissal of the concerned workman was proper and justified and he was not entitled to any relief of reinstatement or any other relief.

The management had prayed that as the concerned workman was dismissed from service after holding domestic enquiry into the charges it may first be decided as a preliminary issue whether the domestic enquiry was fair, proper and in accordance with the principles of natural justice. Accordingly after hearing the parties I decided to first hear the preliminary issue whether the domestic enquiry into the charges against the concerned workman was fair, proper and in accordance with the principles of natural justice. By the order dated 29-4-87 the Tribunal held that the enquiry into the charges levelled against the concerned workman was fair, proper and in accordance with the principles of natural justice.

Now the points for decision in respect of Item No. 1 to the schedule of reference are (1) whether 7 concerned persons of Item No. 1 of the schedule of the order of reference were workmen of M/s. Kalyanpur Lime and Cement Works Ltd. (2) whether the termination of their services was justified and (3) whether the dismissal of the concerned workman Shri Surajdeo Pandey of Item No. 2 of the schedule to the order of reference was justified.

The management examined 5 witnesses and the workmen examined three witnesses in support of their respective case. The documents of the management were marked Ext. M-1 to M-21 and the documents of the workmen were marked Ext. W-1 and W-2 series.

I will first take up Item No. 1 of the schedule of the reference.

Admittedly Kalyanpur Lime Cement Works Ltd has lime stone quarry and as covered under the Metalliferous Mines Regulation, 1961. Under the said regulation practical experience of candidates for mates and blasters examination is necessary as no person could be admitted as a candidate at any examination for a mate or blaster certificate unless he satisfies the board that he has practical experience in Mining mate for a period of not less than three years and two years respectively. The case of the management is that the 7 concerned persons were taken as trained mates apprentices firstly for two years on a stipend of Rs. 200 per month in the first year and Rs. 225 per month during the second year and for further period of one year on a stipend of Rs. 350 per month. The case of the workmen in their W.S. on the other hand is that they picked up the work and responsibility within a week of their joining and they began to work as Mining mates independently. Thus the point in controversy is whether the concerned persons were trained mate apprentices or were working as Mining mate and were thus the workmen of the management. Ext. M-13 to M-13/6 are the appointment letters of the concerned 7 persons which shows that they were appointed as apprentices/trainee mate for two years on consolidated stipend of Rs. 200 per month. Ext. M-14 to M-14/6 will show that the training period of the concerned persons was extended for one year and that they would be drawing a stipend of Rs. 350 per month but the other terms and conditions of their training was to remain the same. Ext. M-15 to M-15/6 dated 3-6-83 are the letters by which the concerned persons were informed that the period of their training was going to be completed and their training will be terminated with effect from 11-6-83 except in the case of Sanjoy Kumar Sinha which will be terminated with effect from 20-6-83 and all of them were asked to get their accounts settled. It will thus appear from these exhibits that the 7 concerned persons had requisite qualifications for being engaged as apprentices and therefore the management agreed to engage them as apprentices on the terms and conditions laid down in Ext. N-13 series. After the concerned persons had completed three years of the training their training was terminated as per Ext. M-15 series. It appears therefore that as the training period of 3 years of the concerned persons was completed the management terminated their training for which they were taken as apprentices.

Ext. M-19 is a petition by one of the concerned persons Shri Krishna Murari Sinha to the Mines Manager in which he had prayed for grant of experience certificate as he required it for appearing in the examination in the Mining mate. Ext. M-20 to Ext. M-20/2 are the certificate granted to the concerned persons Krishna Murari Sinha, Sanjay Kumar Sinha and Abinash Kumar Sinha by the Manager of the management which shows that they had obtained practical experience for a period of three years and they were recommended to be proper persons to be examined for certificate of competency. It will appear from these certificates also that the concerned persons were taken as apprentices for trainee and therefore after completion of three years period the management had granted them the experience certificate on petition filed by them which were of nature similar to Ext. M-10. The documents discussed above show that the concerned persons were taken as apprentices for mate trainee and that after they had completed three years of training they were granted the experience certificate by the management so that they can appear in mates certificate examination.

Admittedly they were paid only a stipend during the said period. There is no case that the concerned persons had received any amount more than the stipend in accordance with the terms of their contract of appointment as apprentices. In terms of the contract Ext. M-13 series the concerned persons contract of the apprenticeship was to be terminated on the expiry of the period of apprenticeship training. It appears that their apprenticeship was terminated vide Ext. M-15 series when they had completed three years of apprenticeship period. It is further provided in Ext. M-13 series that it shall not be obligatory on the part of the employer to offer any employment to the apprentices on the completion of the period of

apprenticeship training in his establishment nor it shall be obligatory on the part of the apprentices to accept the employment under the employer. Thus after completion of the period of apprenticeship neither the management was obliged to keep the concerned persons in employment nor the concerned persons can force the management to give them employment under the terms of their contract.

The question next to be decided is whether the concerned persons had been engaged by the management as they are "workmen" as contemplated under Section 2(s) of the I.D. Act. MW-2 Shri R. K. Srivastava, Asstt. Head Time Keeper stated that the concerned 7 persons joined as trade apprentices for training on contract basis firstly for a period of two years and subsequently for a period of one year. He has stated that the company's workmen get wages, D.A., V.D.A., H.R.A., P.F. Bonus etc. but the concerned persons were getting stipends only as they were apprentices under training and were not paid any amount other than the stipend. He has also stated that the Mines mates submit daily report of daily examination under the signature and has exhibited Ext. M-17 bearing the signature of Shri Jaswan Singh and others. He also proved the measurement slip Ext. M-18 bearing the signature of Shri Ram Sambuj Tewary to show that these statutory registers were not written by the concerned persons. He also stated that the concerned persons were not entrusted with any work on production side. According to him there are 25 mining mates in the quarry who write the daily report and work according to the regulation. He has also denied that the concerned persons were doing the job of Munshi. MW-3 Shri B. K. Sinha, Asstt. Quarry Manager stated that mates are employed in each section and mazdoors blasters and drillers work under the mate. He has denied that there is any post of Munshi under the mate. He has stated about the duties were performed by the concerned persons. He has stated that no work was taken from the apprentices and the apprentices only watched the work being done in the mine. He has stated that the Mining mates have to do different types of safety work as per regulation. He has denied that the concerned persons were writing the account work done by each worker. MW-4 Jaleswar Singh Mining mate stated that the concerned persons were given training from 1980 to 1983 and during that period no work was taken from them and only training was imparted to them. According to him the concerned persons did not work with their own hand and they only watched the Mining operations being done. MW-5 Raghubir Singh was formerly appointed as Munshi in 1955 and after he passed the Mining mate examination he was employed as mate and since then the post of Munshi has been abolished on account of Mining regulation. He has stated about the different batches of apprentices appointed by the management from the year 1977. He has stated that the concerned 7 persons were put on training and were not assigned to perform any job. MW-1 Shri Hassan, Personnel Manager stated that the management has to keep the apprentices under the apprenticeship Act, 1961. He has stated that the company pays stipend to them and no wages is paid to them during the period of apprenticeship. He has stated that no work is taken from the apprentices. He has also denied that the work of Munshi was taken from the apprentices. He has further stated that after the abolition of the contract system the management did not employ any Munshi and the mates do the work of raising and filling of challans etc. On the other hand the workmen have examined WW-1 Harendra Singh, WW-2 Babban Singh and WW-3 Akhilesh Singh who are all concerned persons in the case. According to the evidence of WW-1 the concerned persons were performing the duty as workmen. He has stated that they were working in different section from 7 A.M. to 12 Noon and from 2 P.M. to 12 P.M. He has stated that one each used to work in each pit under the mining mate and they used to maintain the attendance of workmen of their respective pit, used to distribute the work to the workmen of their respective pit, make entering in the jugar setting register, used to maintain the account of workers regarding the number of trolleys loaded and unloaded by the workmen and the entry of their work made in the job cards. He has also stated that they were supervising loading and unloading of trolleys and used to move about and not down the work being done by them. He admitted in his cross-examination that he had not passed

the mining mate examination during the course of his period of trainee and that he passed the mining mate examination in December, 1985. He has also stated that an experience certificate was required for appearing in the Mining mate examination and he had taken experience certificate from the management. He has also admitted about his contract of agreement Ext. M-13 bearing his signature on the basis of which he started working in Kalyanpur lime. He also admitted that initially the contract was for two years which was extended for further period of one year. WW-2 Babban Singh stated that he was designated as Trainee mate in his appointment letter. He has stated that he attendance of the workmen was marked by him. He has proved the attendance register Ext. W-1 and W-1 which have been written by the other concerned person Shri Avinash Singh. He has also proved the job cards Ext. W-2 series which are completely eaten by the white ants and it is difficult to read it. However he has stated about the writing of the concerned persons in Ext. W-2 series. No other document has been produced to show that the concerned persons were doing the work as being asserted by them. WW-3 Shri Akhilesh Singh has also admitted that he was working as trainee mate. In cross-examination he has stated that he had applied for the job of apprentice and was called for an interview and was taken as trainee mate. He also admitted that he had entered into a contract. He has also stated that he had received experience certificate for appearing in the mining mate examination. He has stated that he had applied twice after passing the mining mates examination in 1984 but has not filed any copy of the application.

On perusal of the evidence of the three concerned persons it will appear that they have given up their case as stated in para 9 and 10 of the W.S. that they were working as Mate and in their evidence they have tried to show that as there was no munshi in the mine, the management was taking the work of Munshi from them. It will thus appear that the case of the concerned persons is not consistent as it is not based on sound footing. They are uncertain whether they should assert themselves to be working as Mining mate or Munshi. It appears that after filling the W.S. the workmen realised the difficulty standing in the way to establish that they were working as Mining mate and as such it appears that they changed their course of case from asserting that they had worked as Mining mate and started asserting that they were working as Munshi. Ext. M-16 is the National Apprentice Training Scheme for the trade of mate (Mines). The syllabus of training is given at page-1 of the said exhibit. At page-2 it is stated that the curriculum in each stage comprises of related theoretical instruction followed by demonstration of different task in simulated condition in training shed by training staff and practice of the same by the trainee till each trainee learns it correctly followed by placing the trainee in actual work site or work place under the case of experienced tradesman for carrying on normal work of the work gang. It further states that the training should be imparted in the vocational training centre set up by the Mines. The trainee has to obtain certificate after last stage to enable him to get mates/blasters certificate competency in the event he gets through in the final trade test examination. It will thus appear that the concerned persons as apprentices had to practice and to learn the job correctly followed by placing them in actual site under the care of experienced workmen. It appears that the concerned persons who were educated were sometimes asked to write some of the registers as Ext. W-1 and W-2 series just as a part of their training and it cannot be said that as they had written those registers they had become the workmen of the management as per Section 2(s) of the I. D. Act.

The apprentices under going training under a designated trade is a trainee under Section 18(a) of the Apprentice Act and the labour law in respect of such apprentices does not apply under the apprentices Act. A case reported in 1983 LIC at page 1185 (Tunga Bhadra Sugar Works (P) Ltd-vrs-The Presiding Officer) has been referred to. It will appear from the said decision that in order to establish whether a person is a trainee apprentice or a workman under Section 2(s) of the I.D. Act, it has to be established that he was employed in an industry. Whether an apprentice is a workman or not could be established if it is shown that he was employed in

an industry to do any skill or unskilled manual, supervisory, technical or clerical work for hire or reward. The documents adduced in the case do not establish that the concerned persons were employed to any skilled, unskilled manual, supervisory, technical or clerical work and the documents show that the concerned persons were taken as apprentices for mate trainee. The documents of the workmen themselves show that under the contract they were apprentices and that after completing the period of apprenticeship they applied for experience certificate to appear in the examination for mate certificate and they in fact obtained such certificate. The surrounding circumstances and the fact that they were paid stipend only during the said period also shows that they were actually apprentices and were not employed to work as workmen of the management. There is no document or evidence on the record to show that the concerned persons had at any time during the course of their apprenticeship had represented the management that as they were workmen of the management they should be paid wages as were being paid to the other workmen employed by the management. The fact that the concerned persons have changed their case of working as a mining mate as stated in the W.S. to the work of Munshi as stated in their evidence also shows the falsity of their claim. Considering all the above facts and evidence and circumstances in the case I hold that the concerned persons were actually taken as apprentices for training as Mines mate in accordance with the contract between the parties and that after completion of the period of three years apprentices training their further training was discontinued. I further hold that it has not been established that the concerned persons were not apprentices and were employed and were actually working in the mines of the management as workmen.

I hold therefore that the action of the management of M/s. Kalyanpur Lime and Cement Works Ltd. Rohtas in terminating the services of the 7 persons is justified under the contract of appointment itself after the expiry of the period of the training there was automatic termination of the contract of apprenticeship.

Now I take up item No. 2 of the schedule to the order of reference.

It will appear from the chargesheet Ext. M-3 dated 2-8-82 that the concerned workman Shri Surajdeo Pandey was charged for misconduct under clause 29 sub-clause (iii) and 19 of the Company's standing order. Clause (iii) deals with "theft, fraud and dishonesty in connection with company's business and property" and clause 19 deals with "leaving work without permission". Thus there are two items of charges of misconduct levelled against the concerned workman.

Ext. M-4 is the reply of the concerned workman dated 21-9-82 to the chargesheet submitted against the concerned workman. It is stated by the concerned workman that as regards theft of the empty drum having been found in the quarter of Shri Vijoy Kumar Pandey in Dhowra colony by the security personnel, the said drum belonged to his elder brother Shri Rajdeo Pandey and that it did not belong to the management. A photo copy of the receipt has been filed to show that Rajdeo Pandey had purchased the drum from General Auto Store, New Market, Patna on 27-7-82 and the said document has been marked Ext. D-1 by the enquiry officer. On perusal of the evidence of MW-1 Laldhari, Head-guard who was in night duty on 1-8-82 it appears that he heard some sound at about 4 A.M. and he set out to find out regarding the said sound and he went towards dhowra colony and when he reached the quarters of Bijoy Kumar Pandey he heard sound of some persons talking and thereafter he entered inside the quarter of Shri Vijoy Kumar Pandey. He has stated that he found a diesel drum of big size and enquired from Vijoy Kumar Pandey who told that it was kept there by Surajdeo Pandey at about 4.30 A.M. In cross-examination he has been questioned as to how he could learn that the drum belonged to the company whereupon he told that there was some oil in the drum and it was of a big size and as such he thought that the said drum belonged to the company. In his further cross-examination he has stated that drums similar to that are sold in the market and that even the management sell their drums. He was not accompanied by anybody when he had entered the quarter of Vijoy

Kumar Pandey. Other management's witnesses also had seen the drum but no specific mark of identification of the drum has been stated so as to conclude that the said drum belonged to the company. The other management's witness have stated that they had identified the drum belonging to the management after it was brought from the quarter of Vijoy Kumar Pandey as there was some oil inside and also on the outer-side of the drum. Even the said evidence does not appear to be supported by the management witness No. 3 Kamta Prasad Singh. Asked as to how much oil was inside the drum, MW-3 stated that the drum was empty and there was no oil in it. On further query whether any grease was visible on the outer side of the drum, MW-3 stated that there was no grease on the outer side of the drum. I will also appear from the cross-examination of MW-3 that none of the department of the company had reported about the theft of any drum from the possession of the company. Thus although the drum was recovered from the quarter of Vijoy Kumar and the concerned workman was claiming it to be of his brother there was no evidence on the record to establish that the said drum belonged to the company. MW-1 who had first set out on hearing the sound did not actually see anybody taking any drum from the company premises. There is no witness examined on behalf of the management to state that the concerned workman was seen taking away the drum from the company's premises. In fact nobody had seen the concerned workman with the drum. In view of the said evidence the probability of the case of the concerned workman that the drum did not belong to the company and that it was purchased by his brother and was kept in the quarter cannot completely be ruled out. In view of the above I hold that the management has failed to establish by cogent evidence that the drum belonged to the management and that it had been stolen away by the concerned workman. Thus this charge under clause 29 sub-clause (iii) has not been established against the concerned workman.

Now I take up the charge of misconduct under clause 29(19) of the company's standing order. The allegation in the chargesheet is that the concerned workman remained absent from his work place unauthorisedly from 8 A.M. to 10 A.M. on 1-8-82. The concerned workman in his reply to the chargesheet Ext. M-4 has stated that as regards abstaining from duty on and from 1-8-82 his letter to his sudden illness which was sent to the management under Registered cover and in support of his illness may be seen. He has further stated that he was still under the treatment of Dr. Fani Bhusan Lal, Incharge, Chest Clinic, Gardaniabagh Hospital, Patna. In his statement before the enquiry officer the concerned workman stated that on 1-8-82 he was on duty from 1.30 A.M. to 10.00 A.M. During the said period at about 8 A.M. he went for his break fast to his residence where he got pain in his chest and he proceeded to his village home where he got himself treated by Dr. Viswanath Pandey and when he somewhat recovered he went to Patna on the advice of the doctor and was under the treatment of Dr. Fani Bhusan Lal of Gandaniabagh Hospital. It is thus admitted by the concerned workman that he did not turn for duty after the tiffin although his duty hour was upto 10 A.M. In cross-examination he has stated that after taking his food he got pain in his chest and went to his village home without even meeting Vijoy Kumar Pandey. His village home is at village Naur in Navinagar, P.S. Distt. Aurangabad and river Sone intervenes between his village home and Banjari. It will also appear from his evidence that he had gone to his village home on foot and about 45 minutes time was taken in reaching his village home. He has clearly stated that as he was very ill he did not inform the authorities or any person to inform the management about his condition. Admittedly, the management has its hospital at Banjari where the concerned workman was working and he could have easily availed of the services of the company's doctor. It does not appear to reason that the concerned workman will walk the distance to his village home if he was very ill or had pain in the chest instead of being treated by the company's doctor. In my opinion, the evidence that the concerned workman was ill and hence had proceeded to his village home is not at all convincing. The workmen have tried to show by Ext. W-2 which is a medical certificate dated 1-2-82 that he was treated by a doctor at his village home. Such medical certificate cannot be believed specifically when the doctor did not turn up to support that he had found the concerned workman ill

and he treated him on 1-8-82. Admittedly the concerned workman did not attend his duty after 8.30 A.M. although his duty hour was upto 10.00 A.M. It is also admitted that he did not take permission of any authority nor had informed any person about his illness. The fact that he had not got himself treated by the company's doctor and had proceeded to his village home in serious illness is not at all convincing and in the circumstances of the case it has to be disbelieved. It appears that the company had recovered drum from the quarter of Vijoy Kumar Pandey where the concerned workman was also residing and it was alleged that the concerned workman had kept the drum there and hence the concerned workman out of fear left the place without informing any persons so that he may not be arrested and handed over to the police. Considering all the aspects of the matter I hold that the concerned workman had left the work without permission during his duty hours on 1-8-82 and as such the management has been able to establish the charge of misconduct under clause 29(19) of the Company's standing orders.

The management did not adduce any evidence to the affect that the concerned workman was in the habit of leaving the work without permission and as the allegation appears to be a solitary one it appears that the punishment of dismissal from his service is too harsh and not proportionate to the charge established against him. The order of dismissal therefore has to be set aside and a lighter punishment has to be passed against the concerned workman for the misconduct under clause 29(19) of the Certified Standing Orders.

I hold therefore that the charge of misconduct under clause 29(3) of the Company's Standing Order has not been established against the concerned workman and therefore he is exonerated of the same. However, the charge under clause 19(19) of the Company's standing order has been established against the concerned workman. The punishment of dismissal for leaving work without permission under clause 29(19) of the Standing Orders is too severe and as such the said punishment is to be modified. The concerned workman is sitting idle with effect from 1-9-83 and the ends of justice will be fulfilled if the concerned workman is reinstated in his job but as punishment he is not paid the wages from the date of his dismissal to the date of his joining. The management is directed to reinstate the concerned workman within one month from the date of publication of the Award and from the date of joining the concerned workman be paid his wages. However, the management need not pay his wages and other emoluments for the period of his idleness but the concerned workman will be entitled the continuity of service.

Award is passed accordingly.

I. N. SINHA, Presiding Officer

[No. L-29011/55/84-D.III(B)]

का. आ. 3567.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार भारत गोलुह माइन्स लि. के प्रबन्धन से सम्बद्ध नियोजकों और उसके कर्मचारों के बीच, अन्वय में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलूर के पंचाट को प्रकटित करती है, जो केन्द्रीय सरकार को 8/11/88 को प्राप्त हुआ था।

S.O. 3567.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Limited and their workmen, which was received by the Central Government on the 8th November, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated : 3rd November, 1988

Central Reference No. 171/87
Old Central Reference No. 25/87

I PARTY :

Shri M. Munikrishnappa,
S/o Shri Munivenkatappa,
3213, Petechamanahalli extn.
Kolar-563101.

Vs.

II PARTY :

The Chairman-cum-M.D.
Bharat Gold Mines Ltd.,
Suvarna Bhavan,
Kolar Gold Field-563120.

APPEARANCES :

For the I party—Shri V. Gopala Gowda, Advocate.

For the II party—Shri K. J. Shetty, Advocate.

AWARD

By exercising its powers under section 10(1)(d) and (2A) of the I.D. Act, the Government of India, Ministry of Labour has made the present reference on the following point of dispute by its order No. L-43012/6/85-D. III(B) dated 4th February, 1987.

2. By a General Order No. S-11025/1/87-D.IV(B) dated 16th/25th November, 1987, it was transferred to this Tribunal. It is at Sl. No. 23.

POINT OF REFERENCE

"Whether the resignation of Shri M. Munikrishnappa had become effective? If not so, to what relief, is the workman entitled?"

3. The first party workman has filed his claim statement and his contentions in brief are as follows :

He joined the service of the second party as Clerk/Typist on 18th May, 1982. In the beginning he worked in the office of Welfare and Labour Officer. Subsequently he was deputed to the personnel department. Then he was transferred to the office of the Chief Surveyor w.e.f. 26th July, 1982. By a memo dated 21st September, 1982 he was again transferred to the personnel department w.e.f. 1st October, 1982. By a memo dated 23rd November, 1982 he was transferred to the Secretary's Department, as a clerk/typist 'Dx' grade. He reported for that post on 23rd November, 1982. He was directed to work in the place of Krishnappa, head Sectional clerk of 'B' grade, who was promoted as a departmental assistant and transferred to personnel department, as per the memo, dated 26th November, 1982. He has worked honestly and diligently. As per the internal notification dated 26th August, 1982 applications were invited, from 'C' grade clerks for filling up the vacancy of one head sectional clerk 'B' grade in the secretary's department. He had applied for the said post by his application dated 2nd September, 1982. Considering his qualifications, merits and experience, Sri Jayaram, the then chief personnel manager called him on 23rd November, 1982 and promised that he would be considered for the post of head sectional clerk of 'B' grade, and in the meanwhile he directed him to work in the vacant post of head sectional clerk 'B' grade in the Secretary's Department, which was lying vacant, since the time of promotion of Sri V. Krishnappa. He further told him that if the first party worked for some time in the said post it would be easy to select and appoint him to the post of head sectional clerk in 'B' grade avoiding possible objections from any quarter. He agreed and order of transfer dated 23rd November, 1982

was passed. He started working in the post of V. Krishnappa, head sectional clerk 'B' grade w.e.f. 23rd November, 1982. He worked there for about a year. In spite of his repeated request he was not selected/appointed to the post of head sectional clerk 'B' grade. By the said attitude of the management, he developed an impression, that he will not be selected and appointed to the said post. Due to frustration and disappointment he tendered his resignation as per his letter dated 12th October, 1983 to the post of clerk/typist in 'Dx' grade w.e.f. 11th November, 1983. It was to come into effect on 11th November, 1983. He gave the same with an impression that the management will select and appoint him to the post of sectional clerk B grade and will not accept his resignation. The management, contrary to his impression, sent a letter dated 22nd November, 1983. Asking him to pay the balance notice period salary and festival advance, since he had no leave. By another letter dated 12th December, 1983, the management asked him to pay the balance notice period salary, to enable it to accept the resignation. Then a third letter dated 19th January, 1984 was issued to him stating that they will accept the resignation subject to the remittance of the balance notice period salary for the period from 2nd November, 1983 to 11th November, 1983 and festival advance of Rs. 200. By his letter dated 24th January, 1984 he intimated that he cannot forego his leave of 1983 and again pay the notice period salary to the extent of 10 days. Then he sought to withdraw his resignation dated 12th October, 1983 and requested the management to intimate as to when he should report back to duty. He did not receive any reply. He again sent a copy of the letter dated 24th January, 1984 with a covering letter dated 19th March, 1984 by registered post. He then called on the personnel manager on 19th May, 1984. The personnel manager asked him to submit his representation. He submitted the representation dated 21st May, 1984, to give him work with effect from 28th May, 1984. On that day he met the personnel manager and he told him that the matter was under consideration. No intimation was given to him. He sent another registered letter on 4th June, 1984, but nothing was heard. Then he issued a legal notice dated 22nd June, 1984, stating that his resignation had been accepted, subject to his paying the dues as shown in the letter dated 19th January, 1984 and that his letter of withdrawal of the resignation dated 24th January, 1984 was not valid. The management has never accepted his letter of resignation. Even otherwise he has withdrawn the same, by his letter dated 25th January, 1984, before it was accepted. Hence his letter dated 12th October, 1983 has never become effective. He should be deemed to be in the service of the second party. He had no intention of resigning his job. Then he raised an industrial dispute. Hence it is prayed that an award may be passed that his resignation dated 12th October, 1983 has not become effective, to hold that he should be deemed to be in service and to grant other reliefs deemed fit.

4. The second party management has filed its counter statement and inter-alia it is contended as follows:

He was appointed as a clerk on 18th May, 1982. He was working in Secretary's Department as clerk-cum-typist in 'DX' grade, at the time of submitting his resignation. It is incorrect that he had been transferred to work in secretary's department in the place of head sectional clerk of 'B' grade. In secretary's Department there was a vacancy for those working in 'C' grade, whereas the first party workman was working in 'DX' grade and was not eligible for consideration for B grade post. His statement that B. Jayaram promised him, the post of head sectional clerk in 'B' grade is not relevant. It is denied that he ever worked in 'B' grade post. His contention that he should have been selected as 'B' grade post has no meaning, since only the employees working in 'C' grade were eligible for being appointed to the said 'B' grade post. It is incorrect to say that out of disappointment and frustration he submitted his letter of resignation dated 12th October, 1983. He tendered his resignation letter dated 12th October, 1983 treating the same as one month advance notice for purpose of accepting the same with effect from 11th November, 1983. As per letter of his resignation he should have worked up to 10th November, 1983, but he was writing letters for grant of leave during notice period and they were not considered, because he had exhausted his privilege leave by 30th October, 1983. He had only half a day privilege leave to his credit. He was marked absent from 2nd to 10th of November, 1983. He was told that his absence cannot be treated as leave. Since he had remained

absent during the notice period, he was asked to pay the balance notice period salary for the period of absence from 2nd November, 1983 to 11th November, 1983 and he had to pay the festival advance of Rs. 200. He did not comply with the same. He was informed that whatever leave he had to his credit had been adjusted for the notice period from 2nd to 11th of November, 1983. He had remained absent and the same cannot be treated as leave. It is not correct that he approached the personnel manager and the latter told him that the matter was under consideration. In his letter dated 24th January, 1984 he had expressed his desire to withdraw his letter of resignation dated 12th October, 1983. He had also issued a legal notice, it has been replied. It is not correct to say that the management never accepted his resignation. It is incorrect that he had no intention to resign, when he sent the letter of resignation dated 10th December, 1983. It is not correct that he had submitted his resignation out of disappointment and frustration. In his petition to the assistant labour commissioner, he has not stated that out of disappointment and frustration, he had given his resignation. He was appointed in Usha Tele Holst Ltd., Kolar, with effect from 10th October, 1983 even during the notice period and hence his contention that he had no desire to resign cannot be accepted. When once an employee resigns from the job by giving advance notice of one month, as per the service conditions, there is no chance of withdrawal of the same after expiry of the period of one month. It becomes effective after the expiry of the notice period. The subsequent correspondence was to recover the dues from him. His resignation was accepted from the date sought for by him after the expiry of one month notice subject, to recovery of balance notice period salary and festival advance. The reference may be rejected.

5. The management has examined two witness and has got marked Exs. M-1 to M-9.

6. The first party workman has examined himself.

7. The parties have been heard.

8. My finding on the point of reference is as follows:

The resignation of Sri Munikrishnappa had become effective. He is not entitled to any relief.

REASONS

9. The preamble to the Industrial Employment (standing orders) Act, 1946 reads as follows:

"Whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them....."

10. As per the definition of the standing orders in section (2)(g) of the said Act, standing order means rules relating to matters set out in the schedule. The 8th item of the schedule states that termination of employment and the notice thereof to be given by employer and workmen is one of the subject matters to be provided for in the standing orders under the Act. There is no dispute on the point that the second party BGMI has its own certified standing orders. A copy of the certified standing orders, certified on 31st October, 1978 has been placed before me. Clause No. 14(a) reads as follows.

Termination of Employment—Notice to be given by the Employer and workmen.

(a) The management may terminate the services of any permanent workmen by giving one month's notice in writing or one month's pay in lieu of such notice. Any permanent workman may leave the services by giving one month's notice in writing or one month's pay in lieu of such notice.

From the aforesaid provisions of law and the standing orders, it is obvious that a permanent workman has a right to leave his service either by giving one month's notice in writing or by making payment of one month salary, in lieu of such notice. The provisions of the standing orders are binding on the parties and neither party is entitled to vary or contradict the terms of the same. It is an admitted fact that the first party Munikrishnappa gave his letter of resignation dated

12th October, 1983 as per Ex. M-1. Ex. M-1 reads as follows:

To
The Secretary,
Oorgaum,
Bharat Gold Mines Ltd.,
K.G.F. 563120.

Dear Sir,

Sub : Resignation with 30 days' notice

I hereby tender my resignation from the post of Clerk/Typist in 'DX' grade held by me in Bharat Gold Mines Limited. I request you to take this as 30 days' notice from today, and relieve me with effect from 11th November, 1983.

2. I immensely thank you and Bharat Gold Mines Ltd., for having given me an opportunity to serve this Company.

Yours faithfully,
Sd/-
(M. MUNIKRISHNAPPA)
Clerk/Typist
P.E. No. 170814
Secretary's Department.

Place : Oorgaum,
Dated : 12th October, 1983

by the aforesaid letter, he had promised to work till 11th November, 1983 and he had requested the management to relieve him on that day. On 22nd November, 1983 he had addressed a letter to the second party as per Ex. M-3, seeking for a service certificate for the service rendered by him from 18th May, 1982, to 10th November, 1983 as clerk/typist in 'DX' period. The management had sent him a letter dated 22nd November, 1983 as per Ex. M-2 stating that though he had stated in the letter of resignation Ex. M-1 that he had given 30 days notice, he had stopped working from 2nd November, 1982 and had not worked between 2nd and 11th of November, 1983. In response to the said letter the first party Munikrishnappa had sent a letter dated 29th November, 1983 as per Ex. M-11. In para 2 of the letter, marked as Ex. M-11(a) he states as follows:

"My thirty days notice period was ended on 10th November, 1983, as I had tendered my resignation with 30 days notice on 12th October, 1983, (20 days in October and 10 days in November—total 30 days.) Hence, my resignation may be treated with effect from 11th November 1983....."

The letter at Ex. M-7 dated 16th March, 1984 addressed by the establishment Usha Telehoist Limited Kolar to the second party shows that the management had written to them whether the first party Munikrishnappa was employed by them, and that they replied that Munikrishnappa had joined their organisation on 19th October, 1983. The letter by the second party to the Usha Telehoist Company dated 6th February, 1984 is at Ex. M-8. In para 14 of his evidence WW-1 Munikrishnappa however states that it has been wrongly stated in Ex. M-7 that he had joined them on 19th October, 1983. However, he has not produced any evidence that he did not join Usha Telehoist Limited on 19th October, 1983, but he had joined, on any subsequent date. In para 36 of his evidence he however concedes that he had joined the said Usha Telehoist Limited Kolar on 29th October, 1983. His contentions raised in his letter Ex. M-11 dated 29th November, 1983 or in his subsequent letters or in the legal notice Ex. W-10 that between 28th October, 1983 and 10th November, 1983 he was ill and that he was not liable to pay the salary of the balance period of the notice of resignation Ex. M-1 is contradicted by his conduct that he had joined Usha Telehoist Limited on 29th October, 1983 itself.

11 From the documents Exs. M-1 M-3 and M-11 and by his conduct in joining Telehoist establishment of Kolar on 29th it is obvious that he not only considered himself to be in the service of the second party BGML till 11th November, 1983 but also insisted that the second party management should also accept the said fact and hold that he was in their service only till 11th November, 1983. According to the management, the first party workman had not

worked for the period between 2nd and 11th November, 1983 and in addition he had to pay the balance of festival advance of Rs. 200 and for these two reasons the management entered into correspondence with the first party workman that he should pay the salary for the span of 2nd to 11th November, 1983, and should also pay balance of festival advance of Rs. 200 so that necessary action could be taken by them. By Ex. M-2 dated 22nd November, 1983 the first party was informed that he did not have leave to his credit and the period of his absence from 2nd to 11th of November, 1983 cannot be treated as leave. In Ex. M-11 which is in response to the letter Ex. M-2, the first party has contended that he had gone to the company's hospital on 28th October 1983 with a sick chit and he was treated as an out patient. He further states in Ex. M-11 that the doctor asked him as to when he will go for duty and he told him that he would attend on 31st October, 1983, but however, he could not recover and therefore he had sent a requisition letter for leave for 31st October thinking that he could attend to his duties from 2nd November, 1983. He further states that when he went to the doctor, he advised to continue the treatment, and therefore he continued his leave up to 10th except of 5th November, 1983. According to him he had utilised half day leave on 5th November, 1983 and thus the notice period ended on 10th November, 1983. He has further made a request that he had earned 21 days privilege leave in 1983 and the same may be encashed and paid to him. Ex. M-4 dated 12th December, 1983 is a letter sent by the second party in response to Ex. M-11. Therein, it is stated that though he had given one months notice, he had abruptly stopped from work without prior intimation and that the period of his absence from 2nd to 11th November, 1983, cannot be treated as a sick period under the rules of the company. He was informed that his request for encashment of leave cannot be considered since he had resigned before encashment. Ex. M-5 shows that the first party workman had addressed a letter to the second party dated 15th December, 1983 and the second party had sent a reply as per Ex. M-5 dated 19th February, 1984. He has been again informed by Ex. M-5 that he should pay the salary for the period from 2nd November, 1983 to 11th November, 1983 and the balance of festival advance of Rs. 200. Ex. M-6 dated 24th January, 1984 is a letter sent by the first party workman to the second party as a reply to Ex. M-5 dated 19th January, 1984. In Ex. M-6 the first party Munikrishnappa has stated that he cannot forego the earned leave of 1983 and he cannot pay the salary for the notice period of 10 days, during which, he was ill and therefore he intended to withdraw his letter of resignation dated 12th October, 1983. The learned counsel for the first party vehemently contended that the second party had not accepted the resignation of the first party tendered as per Ex. M-1, and therefore the first party workman had the right and liberty to withdraw the same and that it may thus be held that the workman has continued to be in service till today. In that connection Ex. M-9 dated 31st May, 1984 states that the resignation dated 12th October, 1983 given by the first party Munikrishnappa had been accepted w.e.f. 12th November, 1983 subject to the recovery of salary for his absence from 2nd November, 1983 to 11th November, 1983 and balance of festival advance of Rs. 200. An admission was also pointed out from para 19 of the evidence of MW-1 Sri. Sannamalige, Personal Manager that the resignation of the first party had been accepted according to Ex. M-9 and that there is no other order in that connection. The material question is whether the resignation given by WW-1, the workman Munikrishnappa as per Ex. M-1 on 12th October, 1983 had become effective from 11th November, 1983 or whether the first party had still the right and liberty to withdraw the same even on 24th January, 1984 as per Ex. M-6. WW-1 the workman has sworn that he had no intention to resign at all and that he had given the letter of resignation Ex. M-1 thinking and being under the belief that he would be asked to withdraw the same and he would be given the post of "C" grade clerk, for which a notification had been issued as per Ex. M-10 dated 26th August, 1982. It is his case that even otherwise the management had not accepted his resignation till the memo. dated 31st May, 1984 and till then he had the liberty to withdraw his letter of resignation Ex. M-1. In that connection he has relied upon his other letters such as Ex. W-1 dated 9th March, 1984, the postal receipt and the postal acknowledgement due for the same marked as Ex. W-2 and W-3, his representation dated 21st May, 1984,

Ex. W-4, postal receipt and postal acknowledgement due for the same, as per Ex. W-5 and W-6, another letter Ex. W-7 dated 4th June, 1984 and the postal receipt and postal acknowledgement due thereon as per Ex. W-8, W-9 and finally the legal notice Ex. W-10 dated 22nd June, 1984.

12. It is sworn by WW-1 Munikrishnappa that on 23rd November, 1982 the Chief Personnel Manager, B. Jayaram had called him to his chamber and told him that he was suitable for the post of B grade but that a letter of appointment cannot be issued and that he should work in the Secretary's department for the time being, and then the order of appointment will be issued to him at the time of next increment or confirmation. He has further stated that one Krishnappa had been promoted and he was working in his place. He adds that with that promise of Jayaram, he started working in the Secretary's department in the place of Krishnappa. The management has examined MW-2 B. Jayaram and he has emphatically denied that he ever called the first party Munikrishnappa, made any promise or that he accordingly worked in the Secretary's department. By I.A. No. 1 the first party workman had called for four documents, the first document called for has been produced by the second party and it is marked as Ex. M-10. The second document called for is the application dated 2nd September 1982, said to have been given by the first party workman for the 'B' grade post in response to Ex. M-10. The first party could have himself produced the office copy of the said application. The documents at Sl. Nos. 3 and 3 in I.A. No. 1 are the internal documents from the office of the Secretary to the Personnel Department. In para 4 of the affidavit to I.A. No. 1 it has been stated that in a memo. dated 26th November, 1982 with a copy to him, he was transferred to the Secretary's Department. Nothing prevented the first party from producing the copy issued to him. The relevancy of the 4th document shown in I.A. No. 1 has not been made out. Under these circumstances no adverse inference can be drawn for the non-production of the documents at Sl. Nos. 2, 3 and 4 of I.A. No. 1. The notification calling for applications to 'B' grade post at Ex. M-10 shows that clerks who had put in 3 years of service in BGML in 'C' grade, may apply to the vacancy of 'B' grade. It is an admitted fact that the first party Munikrishnappa joined the BGML on 18th May, 1982. On 26th August, 1982, the date when Ex. M-10 was issued, he had hardly put in three months of service and that too in 'DX' grade, whereas as per Ex. M-10 only those clerks who had put in three years of service in 'C' grade were eligible to apply to the head sectional clerk of 'B' grade. The last date for furnishing the particulars and making the applications was 8th September 1982. MW-2 Jayaram has categorically stated that he was aware that clerk working in 'DX' grade cannot endeavour to apply to the post of clerk in 'B' grade. The last date for giving the applications to post of 'B' grade clerk was 8th September, 1982. Under such set of circumstances it can hardly be believed that on 23rd November, 1982 MW-2 Jayaram, the Chief Personnel Manager had called him and had told him that he was suitable for 'B' grade post but that he should work in the Secretary's Department for some time and then he will be appointed to 'B' grade post at the time of his next increment or confirmation. The fact that he had joined the Usha Telehoist Ltd. Kolar on 29th October, 1983 establishes that he had resigned his post in all seriousness and not out of any frustration. There is no dispute that till today he is still working in the said Usha Telehoist Company. His contention that as an interim arrangement he had got employed in Usha Telehoist cannot be believed, for according to his own case until 24th January, 1984, when he wrote Ex. M-6, he had no mind to withdraw his letter of resignation. On facts, it thus emerges that the first party workman has failed to prove that on account of some promise made by MW-2 Jayaram he was having high hopes and since his hopes did not materialise he tendered his resignation Ex. M-1 on 12th October, 1983, after about 11 months out of sheer frustration. The learned counsel for the first party has referred to the case of P. K. Ramachandra Iyer and others Vs. Union of India [1984 (2) Supreme Court page 141]. In para 34 of the authority it has been observed that Dr. Gupta had been a victim of unfair treatment because, he had raised a voice of dissent against certain claims made by the high ups in I.C.A.R. Since the facts of the case at hand are entirely different, I am of the view that the principle laid down that a resignation given in protest should not have been accepted as a resignation does not apply. In order to reinforce his contention that the

workman was at liberty and had a right to withdraw his resignation at any time before it was accepted on 31st May, 1984 as per Ex. M-9, the learned counsel for the first party cited the case of state Bank of Punjab Vs. Amar Singh Harika (AIR 1966 Supreme Court page 1313). The authority is on the point that the mere passing of an order of dismissal is not effective unless it is published and communicated to the officer concerned. The case at hand does not involve any question whether the second party had ever passed an order of dismissal and had not communicated the same to him. The question as to at which point of time the letter of resignation given by an employee becomes complete and effective, stands entirely on different footing and the dicta laid down in the authority is not attracted.

13. The learned counsel for the first party has then referred to the case of Rajkumar Vs. Union of India (AIR 1969 Supreme Court page 180). The authority is on the point that withdrawal of resignation is permissible even before communication of the order of acceptance. The facts of the reported case would disclose that a member of the I.A.S. asked the Government to relieve him from service and then the Government had accepted it, but before the order was communicated to him, he withdraw his offer of resignation. In such set of circumstances the aforesaid principle has been enunciated.

14. The learned counsel for the first party placed reliance on the case of Nagaraju Vs. State of Karnataka [1983 ILR (Kar) page 2825]. The authority is on the point that an employee has a right to withdraw the resignation tendered by him before it becomes effective, and he goes out of employment.

15. The learned counsel for the first party cited the case of Balram Gupta Vs. Union of India (1987 (Supplement) supreme Court cases page 228). The principle laid down in the authority is that when a person in Government service gives a notice of voluntary retirement, he can withdraw the same, before it becomes effective, notwithstanding any rule providing for obtaining of specific approval of the concerned authority.

16. In the case of Rajkumar it has been clearly laid down that as long as the employee has the locus paenitentiae, he can withdraw his letter of resignation. In the case of Nagaraju also it has been laid down that before the employee goes out of employment and the resignation tendered by him had become effective he can withdraw the same. In the case of Balram Gupta also it is important to note that notice of voluntary retirement can be withdrawn at any time before it had become effective. All these three authorities support the case of the second party itself, for the simple reason that by the time the first party Munikrishnappa sent his letter of withdrawal Ex. M-6 on 24-1-84, he had no locus paenitentiae with him. At the very outset of the present award the provisions of the standing order relating to the termination of his services has been set out and according to clause (4) of the standing order the termination of his service, at his own option became effective as soon as the month's notice got completed on 11-11-1983. If the workman had so desired he could have left the service without notice to the management but in that event he was required to pay one month's pay in lieu of the notice. In the present case the workman had opted to give one month's notice and whether he actually worked during the whole of the period of one month's notice or not is entirely different question and the locus paenitentiae which he had, came to and end at the end of the period of one month's notice. The aforesaid three authorities thus support the case of the second party in showing that the first party Munikrishnappa had neither any right nor liberty to withdraw his letter of resignation after 11-11-83. The three authorities would have been helpful to the first party had he withdrawn his resignation at any time before the 11-11-83. The question whether the first party had the locus paenitentiae even after 11-11-83 until he withdrew his resignation by M-6 on 24-1-84 is a pure question of law and any response by the management showing that it had not accepted his resignation during that span of time will be wholly inconsequential. Perforce, a finding emerges that the letter of resignation tendered by the first party workman had become effective by the end of 11-11-83 and the withdrawal of resignation by him at any time after 11-11-83 and more so on 24-1-84, was of no consequence and that

he cannot claim that he has continued to be in the service of the second party and that he is entitled to consequential benefits.

17. In the result, an award is passed to the effect that the resignation of Sri Munikrishnappa had become effective by the close of 11-11-83 itself and that he is not entitled to any relief.

(Dictated to the personal assistant, taken down by her, got typed and corrected by me).

B. N. LALGE, Presiding Officer
[No. L-43012/6/85-D. III(B)]

का. भा. 3568-—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन आयल कारपोरेशन लि. राजकोट के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचाद की प्रकाशित करती है, जो केन्द्रीय सरकार की 8-11-88 की प्राप्ति हुआ था।

S.O. 3568.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Indian Oil Corporation Limited, Rajkot and their workmen which was received by the Central Government on the 8-10-88.

ANNEXURE

BEFORE SHRI C. G. RATHOD, THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, AHMEDABAD

Reference (ITC) No. 13 of 1987

ADJUDICATION

BETWEEN

Indian Oil Corporation
Rajkot

AND

The workmen employed under it.

In the matter whether the action of the management of the Indian Oil Corporation (Refinery Pipeline Division) Mathura-Salaya Project, Rajkot in not paying the transfer benefits to their employees on account of shifting of their Head Office from Rajkot to Gauridada is justified? If not, then what other relief the workmen are entitled?

INDUSTRY : Oil

Rajkot

APPEARANCES :

Shri H. K. Rathod for the Union.

Shri R. P. Bhatta for the Corporation.

AWARD

By an order No. L-30011/6/85-D. III(B) dated 4-2-1987, the Under Secretary, Government of India, Ministry of Labour, New Delhi in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the ID Act, 1947 has referred the dispute between Indian Oil Corporation, Rajkot and its workmen to the Industrial Tribunal, Ahmedabad. The said dispute was thereafter referred to this Tribunal. The dispute referred to is as under :

"Whether the action of the management of the Indian Oil Corporation (Refinery Pipeline Division) Mathura-Salaya Project, Rajkot in not paying the transfer benefits to their employees on account of shifting of their Head Office from Rajkot to Gauridada is justified? If not, then what other relief the workmen are entitled?"

2. The Indian Oil Pipeline Employees Union (hereinafter referred to as 'the union') has filed its statement of claim at Ex. 10 and briefly it is stated as under that the Indian Oil Corporation has a Pipeline Division and also a Marketing Division. These are two separate divisions and the employees in both the division are governed by the same statute, service conditions and regulations that Mathura-Salaya Pipeline Project has its Head Quarter at Rajkot since June, 1980; that a circular has been issued on 13-5-81 and by that circular, the Indian Oil Corporation has changed its Head Quarter from Rajkot to Gauridada on paper, but the office and its work was being continued at Rajkot till September, 1984. In September, 1984, the management on completion of the construction work, has decided to change the Head Office from Rajkot to Gauridada and on account of this change, the employees working in the project and who are attending the office at Rajkot are now required to go to Gauridada. According to the Union, as the management has shifted the Head Quarter of Mathura-Salaya Project from Rajkot to Gauridada, its place of working has also changed, but according to the rules and regulations, the employees are entitled to all the benefits on account of the transfer. It is also stated that Gauridada is 15 K.M. away from Rajkot; that, in fact, if a person has to go beyond 8 K.M. away from the office, he is entitled to T.A. & D.A. but they are not claiming such T.A. and only claiming normal transfer benefits. It is also stated that the management had another Pipeline Project at Mathura-Jullundhar and its Head Office was at Gurgaon and the said head office was shifted to Bijwasan. The distance between Gurgaon to Beejwasan is 6 K.M., but inspite of the same, persons transferred from Gurgaon to Bijwasan Project were given transfer benefits. But the facts of the employees working in Mathura-Salaya Pipeline and the facts of the employees working in Mathura-Jullundhar Pipeline are similar and hence the benefits as were available to the employees there should also be given to the employees working in the Mathura-Salaya Pipeline at Rajkot. Moreover, the distance between Rajkot and Gauridada is more than the distance between Gurgaon to Bijwasan and, therefore, also the demand of the Union is just and legal. It is further averred in the statement of claim that the management has issued a circular on 13-9-84 stating therein that they have shifted Salaya-Mathura office from Rajkot to Gauridada and it is started at Gauridada on 14-9-84. His circular was issued without taking into the confidence of the Union. In fact, the Union has demanded that they be given all the transfer benefits. There is a settlement dated 24-5-83 and as per the said settlement Clause No. 5.8, the employees are entitled to transfer benefits. In fact, there is no other alternative as the management has not made any provisions for residence for its employees at Gauridada; that the management should provide transfer benefits to all the employees as there has been a change in the office from Rajkot to Gauridada and that there will not be a great financial burden and hence the demand as above.

3. The Indian Oil Corporation (hereinafter referred to as 'the Corporation') has filed its written statement initially at Ex. 12 and also at Ex. 11. According to the Corporation, the Union has initially filed its statement of claim and, therefore, they had prepared the written statement on 1-6-87 but it was filed in the Court at a later stage and thereafter again another statement of claim as at Ex. 10 was filed. They have filed the written statement at Ex. 11 on 10-12-87. I will refer to the contentions raised in Ex. 11 and Ex. 12 as it practically covers all the contentions raised in Ex. 12 also.

4. It is contended that the Indian Oil Corporation Ltd. is a Government of India undertaking and it is a company incorporated under the Companies Act. It has its registered office at Bombay and Head Office at Delhi. It has two divisions namely (1) Refineries and Pipe Line Division and (2) Marketing Division. It is further contended that the service conditions of the employees of the refineries and Pipe Line Division and that of Marketing Division are different in many respects and the employees are not governed by the same set of service conditions or rules and regulations. It is further contended that as early as in 1980 a decision was taken that the head quarter of Salaya-Mathura Pipeline project (SMPL) should be located at village Gauridada. It is further contended that, however, since the office premises and other buildings were to be constructed it was then decided that

temporarily the office of that Unit should be located in the Rajkot City itself. It is further contended that it is not true that this contention is raised as an after thought. It is further contended that the Union is very much aware that SMPL project is a part of Refineries Division-Pipe Lines and is meant for transporting crude oil from Vadinar near Jamnagar to Mathura in Uttar Pradesh and Koyali in Gujarat. It is further stated that the pipe line has been laid and the pump stations have been installed from Salaya in Gujarat to Mathura in U.P. There is one such pump station at village Gauridada which is about 15 K.M. away from the Rajkot city. The office at Rajkot, therefore, started functioning from June 1980 and after the building at Village Gauridada was ready sometime in August, 1984 the office was shifted to Gauridada village and from August, 1984 onwards the office of that Unit is located at village Gauridada. According to the Management, the work place for SMPL Unit is at Gauridada from the beginning. It is further contended in order, however, not to cause any inconvenience to the employees staying at Rajkot, it was decided that they may be permitted to continue to stay at Rajkot and the Management will not insist that the employees should stay at Gauridada. It is further contended, in fact, the Management took compassionate view in order to minimise the inconvenience and hardship of the employees and, therefore there is no question of paying any transfer benefits in respect of their movement from Rajkot to Gauridada. In fact, the Management can legitimately insist upon those employees to stay at Gauridada and not permit them to stay at Rajkot. It is further contended that this does not, therefore, amount to change in the service conditions nor does it amount to transfer of working place. It is also stated that though not obligatory the Management has made necessary transport facilities to the employees for attending to their duties from Rajkot to Gauridada and back. It is denied that there is any discriminatory treatment given to the employees as stated or otherwise. It is also contended that the case of Mathura Jullundhar pipe line is not comparable with the present one and the facts of that case are entirely different from the facts of the present case in as much as transfer benefits were only allowed to construction employees of Mathura Jullundhar pipe line Unit of their movement from Gurgaon in Haryana to Bijwasan which falls in Delhi. Here it is contended that Gauridada is part of Rajkot District. It is further contended that when instant case is not a case of transfer the question of granting any transfer benefits as per the settlement or otherwise does not arise. It is also contended that there is no change in the place of the work. The Union is on the contrary trying to create unnecessary confusion. It is further contended that the demand of the Union is patently illegal and unjustified; that the entire approach of the Union is thoroughly misconceived and patently illegal. It is further contended that at Gauridada there is an office and hence it is likely to take some time in development. It is further contended that it is not obligatory on the part of the Management to provide for all the facilities and benefits to all the employees as they require at Gauridada, that it is the option of the employees to service the Management whether the Management provides for the adequate facilities or not. In other words, it is contended that the stand of the Management is perfectly just, legal and proper that the Officers' Association of the Indian Oil Corporation, SMPL Unit has raised a similar issue in the writ petition before the High Court and it was summarily rejected on 15-4-85, and hence the claim made by the Union is not tenable and it requires to be returned to the Government.

5. In the instant case, the Union has led an oral evidence examined Mr. Narendra Pragjibhai Ganatra, vide Ex. 41. The Corporation did not examine any witness. In other words they did not seek any legal evidence as per Ex. 43. After the evidence was led, I have heard Mr. H. K. Rathod for the Union and Mr. R. P. Bhatt for the Management.

6. The facts as they appear on record are that admittedly the Indian Oil Corporation has two divisions namely (1) Refineries and Pipe Line division and (2) Marketing division. The present dispute is between the employees of Refineries and Pipe Line division working at Salaya-Mathura Pipe Line Project at Rajkot and the Management i.e. the Indian Oil Corporation Ltd. Admittedly the pipe line for transporting crude oil from Vadinar near Jamnagar to Mathura in U.P. and Koyali in Gujarat appears to have started prior to 1980. In the year 1974, the office of Salaya Mathura Pipe Line Project was shifted to Rajkot. It was then shifted to Jamnagar

in the year 1978 and it was again brought to Rajkot in the year 1980. The Management has decided to construct a pump station at Gauridada and for that purpose, they wanted to construct office also at Gauridada and hence it is the say of the Management that they decided to shift the Head Quarter at Gauridada instead of Rajkot in the year 1984. Further as per the Ex. 19, they have notified that while Gauridada is considered as Headquarters, the employees are allowed to stay at Rajkot. This circular is dated 13-5-81. In September, 1984 or there about when the office was constructed at Gauridada, the employees who were attached the Rajkot office are being provided transport facilities for going to Gauridada from Rajkot and back on a nominal payment of Rs. 5 per month. The Gauridada is 15 K.M. away from Rajkot and according to the Union since the office has shifted from Rajkot to Gauridada, they are entitled to transfer allowance. It is an admitted fact that the persons working in the Pipe Line have a look into the maintenance of the Pipe Line, but there is also some administrative work and at present, about 100 persons are working at Gauridada. In other words, these persons stay at Rajkot, but they have to attend their office or place of work at Gauridada. The case of the Union is that they never knew that Gauridada was the Head Quarter and they came to know about Gauridada as Head Quarter only during conciliation proceedings. As Gauridada the pump station and the office is at a distance of about 1 1/2 K.M. from Gauridada village. According to the Union and the evidence of Mr. Narendra Pragjibhai Ganatra, vide Ex. 41, in the case of Mathura-Jullundhar Pipe Line, transfer benefits were given to all the employees and not merely to the employees working on the construction side.

7. Now the short question is whether the Management should pay the transfer benefits to their employees on account of shifting of Head Office from Rajkot to Gauridada. As I have stated earlier, Gauridada is 15 K.M. away from Rajkot. It is a different revenue village and, therefore, the question is whether transfer benefits should be allowed to the employees who are now required to work at Gauridada instead of at Rajkot. Admittedly, all of them are now staying at Rajkot and it is also not in dispute that they are getting the benefits like city compensatory allowance, house rent allowance, etc. as is admissible for the City of Rajkot.

8. Further the documents are produced in this case indicate that though the Management states that they have decided to have the Head Quarter at Gauridada in the year 1980, the transfer of Mr. N. S. Maniar as at Ex. 20, 21 and 22 in July, 1980 was made at Rajkot. Further as per Ex. 24, dated 23-4-80, the employees working at Vadinar were transferred to Rajkot in the same capacity in 1980. Similarly, by Ex. 24, certain employees working at Vadinar were transferred to Rajkot in the same capacity w.e.f. 17-5-80. Ex. 25 is in respect of the posting of one Mr. P. Sugavanam, Deputy Finance Manager. It is dated 7-5-80 and it clearly states that consequent upon the establishment of Central Office of SVK/SMPL at Rajkot, the Management has approved the transfer of Shri P. Sugavanam, from Vadinar to Rajkot in the same capacity w.e.f. 31-5-80. Thus it also states about the establishment of Central Office at Rajkot. Further the appointment of Shri Joshi Nandlal Mohanlal, vide Ex. 28, that of Mr. Thomas Mathew, vide Ex. 29, the office order in respect of Mr. Thomas Mathew, Ex. 20, the promotion order of Mr. P. K. Deb, Ex. 31, the transfer order of Mr. N.M. Gohel, Ex. 32 are of all the year 1982 and they refer to the place of posting at Rajkot (see Exs. 28 and 29) and other orders. Similarly, Ex. 35 dated 21-4-83, it is in respect of transfer of one Mr. P. M. Farse from Allahabad to Rajkot. Ex. 36 is the transfer order of Mr. N. M. Gohel. It is dated 29-5-84 and it is from Sildpur to Rajkot and that the office order, Ex. 38 by which Mr. M. Shreedhar, Pipeline Engineer, SMPL Kot is transferred to Rajkot on 30-3-84 and there is also office order dated 15-6-84, Ex. 39 which is in respect of release order of Mr. G. P. Gupta, Dy. Manager (Projects) who has been asked to report at Rajkot. Thus these orders indicate that in the year 1980, 1982, 1983 and 1984, transfer orders and office orders were issued on the assumption that Rajkot is the Head Quarter and not Gauridada. It is not correct to say that the notification to have the Headquarter at Rajkot Gauridada vide Ex. 19 really acted open. It is only in the year 1985, that there is an order of Shri A. K. Srivastava, Ex. 40, who was transferred from Barauni to Gauridada which is dated 22-4-85. There is no dispute that the office at Gauridada started since September,

1984, but the question is whether the transfer allowance should be paid to the employees who are required to work at Gauridad.

9. It appears from the other document as at Ex. 23 dated 11-5-83 that Shri Digamber Singh was transferred from Gurgaon to Bijwasan. Now Bijwasan is only 10 K.M. away from Gurgaon, but inspite of the same transfer allowance was given to Shri Digamber Singh as shown as at Ex. 33. Similarly, the office order at Ex. 34 dated 9-6-83 also shows that the Management has allowed to avail the joining time in 2nd spells to three persons as shown in the said office order. They were, in fact, transferred to Bijwasan from Gurgaon. The Management has admitted that in that case also there was a change in the place of work. There the change was from Gurgaon to Bijwasan. According to the Management, Gurgaon was in Haryana and Bijwasan was a suburb of Delhi. Now according to the Management, here there has not been any change in the place of duty as it has already declared as early as in 1981 that the Head Quarter was at Gauridad. Now as I have stated earlier, in view of the documentary evidence as above, it is clear that even though the Management had declared Gauridad as the Head Quarter in May, 1981 they do not appear to have acted upon that statement in as much as in the subsequent orders, they have shown at different places that the persons were transferred from other place to Rajkot and from Rajkot to other different places. At no place, perhaps, except one, they have indicated that the persons were transferred to Rajkot (Gauridad). Thus this change was effected in September, 1984 or thereabout and not earlier.

10. Mr. H. P. Bhatt, the learned Advocate for the Management has urged before me relying on the decision namely *Shalimar Paints v. Third Industrial Tribunal*, A.J.R. 1971, p. 90 that in the instant case it cannot be said that there was a transfer. Now in that case prior to January, 1963, the Managing Agents had provided office accommodation to Shalimar Paints at premises Nos. 6, Lyons Range, Calcutta. The Managing Agency's Agreement was terminated w.e.f. 1-1-1963. The Managing Agency has revoked the licence of the petitioner permitting them to occupy office accommodation at the said office. As a result thereof, Shalimar Paints was compelled to vacate the said office accommodation and shifted its entire undertaking from 6, Lyons Range, Calcutta and moved its Head Office to Goabaria, Howrah where it had been having its factory for a long time past. It shifted its Sales Division to 13, Camac Street, Calcutta. It is in that view of the matter that the Hon'ble High Court relying on the decision namely *Newson v. Robertson*, (1952) 2, ALL. FR 728, held that there was no transfer of workmen employed in the business. It is true that if the business or undertaking is shifted from one place to another, there is no transfer. In the present case, if the Management wanted to shift their office within the limits of Rajkot itself or within the permissible limit, say approximately 8 K.M., it could not be said that there was transfer of the employees.

11. Mr. R. P. Bhatt, the learned Advocate for the Management has relied on the following lines:

"It, therefore, follows that just as an employee cannot make a claim for an extra allowance when the shifts his residence to a more distant place from his office there can be no claim for compensation when the employer shifts his business or undertaking from one place to another. The employer, in my view, has an inherent right to choose his place of business. The fact that some of the employees may have to incur additional expenses by way of travelling as a result of such shifting of employer's business or undertaking, does not entitle the employee to make a claim for extra benefit or compensation. In any event, such a claim cannot be made on the ground that there has been a transfer of employees. The expression 'transfer', in my opinion, connotes that an employer has more than one place of business and the employee is called upon to work in a different place of business from the one in which he worked previously. As I have said, however, there is nothing to prevent the employees from insisting that the cost of travelling would form an express stipulation in the contract of employment and has to be borne by the employer."

12. It is clear from what has been stated as above that the facts as stated therein are different. There the factory was situated at Calcutta itself and not in different revenue village. Again, apart from the revenue limits, it appears that here the distance between Rajkot and Gauridad is 15 K.M. It is true that at present the employees staying at Rajkot are getting the benefits of C.C.A. & H.R.A., but that consideration itself is not relevant in as much as we have also to consider that at Gauridad, the Management has not provided alternative accommodation to the employees who are required to work at Gauridad. If by chance, the Management constructs the quarters at Gauridad and ask its employees to live there, the employees would not be entitled to G.C.A. & H.R.A. as is available at Rajkot. They will also lose other facilities such as school, college and other facilities which are available at Rajkot. But inspite of the same, it appears to me that in the instant case the employer has not merely shifted its Head Quarter. The shifting itself is not limited to Rajkot city. The Management cannot urge by shifting its Head Quarter from one place to another that mere shifting would not amount to transfer. The shifting, if it is shifting of business is reasonable and if it is within the limit of City, perhaps, different consideration would arise but the Management cannot shift its Head Quarter say at the distance of 30 K.M., 40 K.M. or 50 K.M. away from the present Head Quarter and then states that there has not been any transfer. In fact, it is a different place of office accommodation and employees are required to work at different Head Quarter and in such a case, can it be said that there is not transfer? This is not the case of mere shifting of office from one place to another in the same City. If the Management, by some process compels the employees to work at an office which is reasonably at a long distance, the effect would be that the employees are required to work at a different place and, therefore, it would in substance, be a transfer. Mr. R. R. Bhatt, the learned Advocate for the Management had urged before me that in the case of transfer from Gurgaon to Bijwasan, the office is not closed to one place and that the office existed of both the places. Even assuming it to be so and agreeing with the proposition as laid down in Calcutta's decision that the entire business or undertaking shift from one place to another, there is not transfer of any workman employed in the business it must be said that the said principle is applicable only when the place of business is shifted in the same City. It would be difficult to apply that principle in case like the present one though I do consider 15 K.M. is not a very long distance. But as I have stated earlier, it is a different village and some time is required to be spent by the employees for going and coming from Rajkot to Gauridad and back. As against that, the employees as I have stated earlier, are compensated by granting C.C.A. & H.R.A. It also appears from the memorandum settlement that clause 5.8 also provides for local transfer benefits. In other words, when there is a change in residence in respect of local transfers, the Management is required to pay the transportation expenses at the rates as shown therein. Now so far as the facts of the present case are concerned, they appear to be on a higher footing than the local transfer and, therefore, the transfer benefits should be allowed to the employees who are required to work at Gauridad and hence my answer to the question referred is that the Management is not entitled to not paying the transfer benefits to their employees on account of shifting of their Head Office from Rajkot to Gauridad and they should pay the same. Once this payment is made, the Management will not liable to pay transfer allowance to the employees in future if it offers quarters to its employees at Gauridad and in the result. I pass the following order :

ORDER

The Management should pay the transfer benefits as permissible to its employees on account of shifting of their Head Office from Rajkot to Gauridad within two months of publication of this award. No order as to costs.

SECRETARY

C. G. RATHOD, Presiding Officer

Ahmedabad, 17 October, 1988.

[No. L-30011/6/85.D.III(B)]

का. धा. 3569.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यैसस तारीखों मिनरल, कान्हेसदर, भद्रासाही माइनस प्राक यैसस ओ. एम. बी. सी. लि., पो. ठकुरानी, जिला क्योसहर, उड़ीसा के प्रबन्धतल से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8/11/88 को प्राप्त हुआ था।

S.O. 3569.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. Tarini Minerals, contractor of Bhadrāsahī Mines of M/s. O.M.D.C. Limited, P.O. Thakurani, Distt. Keonjhar Orissa and their workmen, which was received by the Central Government on the 8-11-88.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

Industrial Dispute Case No. 25 of 1988 (Central)
Dated Bhubaneswar, the 26th October, 1988

BETWEEN

The Management of M/s. Tarini Minerals, Contractor at Bhadrāsahī Mines of M/s. O.M.D.C. Ltd., P.O. Thakurani, Dist. Keonjhar, Orissa.

...First Party—Management.

AND

Their workman Sri Bijoy Kumar Giri, Supervisor, Represented by the Secretary, Barbil Workers Union, P.O. Bolani, Dist. Keonjhar.

...Second Party—Workman.

APPEARANCES :

None.....for both parties.

AWARD

1. The Government of India in the Ministry of Labour Department in exercise of powers conferred upon them under clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute vide their Order No. L-26012/10/88-D.III(B) dated 26th July, 1988 for adjudication :

“Whether the action of the Management of M/s. Tarini Minerals, Contractor of Bhadrāsahī Mines of M/s. OMDC Ltd., P.O.-Thakurani, Dist. Keonjhar, Orissa in terminating the services of Sri Bijoy Kumar Giri, Supervisor with effect from 9-11-1987 is justified. If not, to what relief is the said workman entitled ?”

2. This case was posted to 7-9-1988 for filing of statement of claim by the second party-workman and a notice thereof was sent to the workman by Regd. post with A.D. In spite of due service of notice on the second party-workers, he did not file statement of claim

on that day. Then this case was posted to 17-10-88 for hearing and notices thereof were sent to both parties by Regd. post with A. D. On 17-10-1988 both parties remained absent and took no step. Since both the parties remained absent, it can safely be inferred that at present no dispute subsists between the parties. Hence a no dispute Award is passed so far as this reference is concerned.

S. K. MISRA, Presiding Officer

[No. L-26012/10/88D.III(B)]

V. K. SHARMA, Desk Officer

नई दिल्ली, 17 नवम्बर, 1988

का. धा. 3570.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिएण्टल बैंक प्राक कामर्स के प्रबन्धतल से संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 17th November, 1988

S.O. 3570.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award, of the Central Government Industrial Tribunal, No. 2, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the Oriental Bank of Commerce and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

Reference No. CGIT-2/22 of 1987

PARTIES :

Employers in relation to the management of Oriental Bank of Commerce.

AND

Their workmen

APPEARANCES :

For the employers.—Shri V. Thaker, Advocate.

For the workman.—Shri S. R. Chavan, (The workman in person)

INDUSTRY : Banking STATE : Maharashtra
Bombay, dated the 11th October, 1988

AWARD

The Central Government by their Order No. L-12012/31/86-D.IV(A) dated 14-4-1987 has referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

“Whether the action of the management of the Oriental Bank of Commerce in relation to its Regional Office, Bombay in transferring Shri S. R. Chavan, Peon from Regional Office, Bombay to Gandhibagh branch,

Nagpur in violation of Bipartite Settlement is justified? If not, to what relief is the workman entitled?"

2. On receipt of this reference, the necessary notices were issued to the Union and the Management. The workman in pursuance of the said notice filed his statement of claim. The Bank management also filed their written statement contending that the action of the Bank in transferring the workman Shri Chavan from Bombay to Nagpur was justified. The workman filed counter statement and challenged the justification of the transfer. The respective parties thereafter filed their respective rejoinders to the statement of claim and the written statement.

3. Thereafter the necessary issues were framed by me. Shri C. A. Joseph, Manager (Personnel) Regional Office Bombay, thereafter filed the affidavit dated 18-2-1988 justifying the action of the Bank in transferring the workman from Bombay to Nagpur. According to him the said workman was transferred to Nagpur, taking into consideration his language and the interests of the Bank.

4. While the case was at the stage of evidence of the workman, he expressed his desire to withdraw the reference in case the Bank would pass an order transferring him from Nagpur to Bombay. Thereafter the Bank issued an order dated 19-9-1988 transferring the said workman Shri Chavan from Nagpur to Bombay.

5. The workman Shri Chavan also appeared before the Tribunal and stated that he is now transferred from Nagpur to Bombay.

6. Therefore, as no industrial dispute subsists and exists between the parties, the reference in question must be, and is disposed of for want of further prosecution in the matter.

Award accordingly.

Sd/-

P. D. APSHANKAR, Presiding Officer
[No. L-12012/31/86.D.IV(A)]
N. K. VERMA, Desk Officer

नई दिल्ली, 17 नवम्बर, 1988

का. भा. 3571.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार की ओर इकट्ठा एत, साऊथ ईस्टर्न रेलवे मनुकेस्टर के प्रबन्धतन्त्र से सम्बन्धित विवादों और उनके कार्यकर्ताओं के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक प्रतिक्रिया, भुवनेश्वर के पंचाद को प्रकाशित करते हैं, जो केन्द्रीय सरकार को 8-11-88 को प्राप्त हुआ था।

New Delhi, the 17th November, 1988

S.O. 3571.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of C.R.W.S.

South Eastern Railway, Mancheswar and their workmen, which was received by the Central Government on the 8-11-1988.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

I. D. Case No. 24 of 1988(C)

C.R.W.S. South Eastern Railway, Mancheswar
...First Party—Management
Vrs.

Shri N. C. Swain, Bunglow Peon.....
Second Party—Workman.

Order No. 6 dated 2-11-1988

1. This reference under section 10(1)(d) and sub-section (2A) of Section 10 of the Industrial Disputes Act was received from the Government of India, Ministry of Labour for adjudication of the following disputes :—

“Whether the actions of Asstt. Workshop Manager, C.R.W.S., E. Railway, Mancheswar is terminating the services of Shri N. C. Swain, Bunglow Peon with effect from 21-7-1986 is justified? If not what relief the workman is entitled to?”

2. The second party-workman was given opportunity to file statement of claim before the Tribunal which he did not. On the other hand he filed a petition on 17-10-88 seeking permission to withdraw from this reference because he has filed an original application challenging the action of the Management which is the subject matter of the present reference before the Central Administrative Tribunal, Cuttack bench which according to him has been admitted, and is pending disposal before the said Tribunal.

3. The Industrial Disputes Act does not envisage a position where the Tribunal can permit a party to withdraw from the reference. The reference has been received by this Tribunal to be answered. In the circumstances, the petition is held to be not maintainable and is rejected.

4. However, the statement of claim having not been filed and the second party-workman having no interest to proceed with this reference, no useful purpose will be served in keeping the reference pending. The reference, in the circumstance, be returned to the Ministry of Labour, Government of India without answer.

Sd/-

ILLEGIBLE, Presiding Officer
[No. L-41012/61/87-D.IIB]

का. भा. 3572.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार के-टोवर्न्ड बोर्ड, देशीकी के प्रबन्धतन्त्र से सम्बन्धित विवादों और उनके कार्यकर्ताओं के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-
करण, नं. 2, बम्बई के पंजाब को प्रस्तुत करता है, जो केन्द्रीय सरकार
को 8-11-88 का प्राप्त हुआ था।

S.O. 3572.—In pursuance of section 17 of the In-
dustrial Disputes Act, 1947 (14 of 1947), the Cen-
tral Government hereby publishes the award of the
Central Government Industrial Tribunal, No. 2,
Bombay, as shown in the Annexure, in the industrial
dispute between the employers in relation to the
management of Cantonment Board, Deolali and their
workmen, which was received by the Central Gov-
ernment on the 8-11-1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

Reference No. CGIT-2/9 of 1987

PARTIES :

EMPLOYERS IN RELATION TO THE
MANAGEMENT OF CANTONMENT
BOARD, DEOLALI
and
THEIR WORKMAN

APPEARANCES :

For the Employers.—Shri S. B. Kaluskar,
Advocate.

For the Workman.—Shri P. B. Donde,
(Workman in person)

INDUSTRY : Cantonment Boards
STATE : Maharashtra

Bombay, the 21st October, 1988

AWARD

The Central Government by their order No. L-13012/12/85-D. II(B) dated 20-1-1987 has referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

“Whether the action of the Cantt. Executive Officer, Deolali in respect of Cantonment Board, Deolali, Distt. Nasik in terminating the services of Shri P.B. Donde, a temporary clerk w.e.f. 30-9-83 is justified? If not, what relief the workman concerned is entitled to?”

2. Notices of the reference were served on both the parties. Accordingly, both the parties appeared before this Tribunal. On 11-10-1988 the Advocate for the management filed an application before this Tribunal stating that the said workman has already been allowed to join duties on permanent basis, and as such the reference does not survive.

3. To-day the above said workman Shri P. B. Donde appeared before the Tribunal in person and filed an application stating that the Cantonment Board has already taken him back in service since

28-4-1987, that an amicable settlement took place between him and the management and that now no dispute is pending between them. I questioned the workman orally about the application. I am satisfied that he is now actually placed in service of the said management. Therefore, the reference in question is simply disposed of.

Sd/-

P. D. APSHANKAR, Presiding Officer
[No. L 13012/12/85-D.II-B]

का. आ. 3573.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रवृत्ति में, केन्द्रीय सरकार द्वारा प्रेषित वेल्डिंग रेल्वे, बम्बई के प्रबन्धन में सम्बद्ध निवासियों और उनके कार्य-
कारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, नं. 2, बम्बई के पंजाब को प्रस्तुत करता है, जो केन्द्रीय सरकार को 8-11-88 का प्राप्त हुआ था।

S.O. 3573.—In pursuance of section 17 of the In-
dustrial Disputes Act, 1947 (14 of 1947), the Cen-
tral Government hereby publishes the award of the
Central Government Industrial Tribunal No. 2,
Bombay, as shown in the Annexure, in the industrial
dispute between the employers in relation to the
management of General Manager, Western Railway,
Bombay and their workmen, which was received by
the Central Government on the 8-11-1988.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

REFERENCE NO. CGIT-2/15 of 1988

PARTIES :

Employers in relation to the management of
General Manager, Western Railway,
Bombay

and

Their workmen

APPEARANCES :

For the Employers : Shri P. B. Menon, O.S.
(Sstt.) Western Railway.

For the workmen : (1) Shri V. L. Masurkar.
(2) Shri R. M. Kadu (3) Shri A. K. Vaidya
(Workmen in person)

INDUSTRY : Railways

STATES : Maharashtra

Bombay, dated the 28th October, 1988

AWARD

The Central Government by their order No. L-41011/27/86-D.II(B) dated 9-5-1988 has referred the following industrial dispute to this Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication :—

“Whether S/Shri R. K. Kaidu, V. L. Masurkar and V. K. Vaidya Asstt. Electrical Fore-
man, Car Shed, Western Railway, Bombay
are entitled to get promotion to the post of
Sr. Electrical Foremen in the scale of
Rs. 700—Rs. 900 (R) with effect from

1-4-1984 ? If yes, to what relief they are entitled to ?”

2. After the reference was made to this Tribunal the notices were issued to both the parties. Accordingly both the parties appeared before the Tribunal.

3. It is seen from the record that after the industrial dispute was raised as above before the Assistant Labour Commissioner (C), Bombay, the above said three workmen had filed their application for promotion also before the Central Administrative Tribunal at New Bombay. It is seen that that Tribunal by its judgement dated 5-4-1988 directed the Western Railway to promote the above said three persons. A zerox copy of the judgement has been produced before this Tribunal. It is further seen that the Western Railway by their order dated 16-8-1988 has already promoted the above three persons to officiate as Senior Electrical Foreman in the scale of Rs. 2000-3200 with effect from 1-1-1984. A zerox copy of the said appointment order has been produced before this Tribunal. The Divisional Secretary of Paschim Railway Karmachari Parishad by his letter dated 25-10-1988 also admitted the above said fact regarding promotion of the said three persons. As such, no industrial dispute now exists between the parties, and hence the reference must be, and is disposed of accordingly.

[No. L-41011/27/86-D.II-B]

P. D. APSHANKAR, Presiding Officer.

का. प्र. 3574.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार इण्डियन इन्स्टीट्यूट ऑफ हार्टीकल्चरल रिसर्च के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, सम्बन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट की प्रकृति करती है, जो केन्द्रीय सरकार को 7-11-88 को प्राप्त हुआ था।

S.O. 3574.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Institute of Horticultural Research and their workmen, which was received by the Central Government on the 7-11-1988.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR AT BANGALORE

Dated : 2nd November, 1988

Central Reference No. 43/87

Old Central Reference No. 5/86

I PARTY

S. Nagaraj and 88 others, The President, Indian Institute of Horticultural Research Station Workers Union, S.C. Road, Bangalore-560009

Vs.

II PARTY :

The Director, Indian Institute of Horticultural Research (ICAR) No. 25, Upper Palace Orchards, Bangalore-560080.

APPEARANCES :

For the I party—Smt. K. Sarojini Muthanna, Advocate.

For the II party—Shri S. V. Sastri Advocate.

Part Award in respect of only some workmen out of 89 workmen shown in the order of Reference

By exercising its powers under section 10(i)(d) and sub-section (2A) of the I.D. Act, the Government of India, Ministry of labour has made the present reference by its order No. L-42011/7/85-D. II (B) dated 14-2-1986.

2. The reference was originally made to the Industrial Tribunal constituted by the State Government. Subsequently, it has been transferred to this Tribunal by a General Order No. L-11025/A/87-D.IV(B) dated 13th February, 1987. It is at Sl. No. 44.

3. The point of reference is as follows :

POINT OF REFERENCE

“Whether the management of Indian Institute of Horticultural Research Station, Bangalore is justified in refusing to employ Sri. S. Nagaraj and other 88 workmen shown in the appended list with effect from 19-1-85? If not, to what relief they are entitled?”

4. In the course of the proceedings, it was found that about 27 workmen out of 89 shown in the appended list to the order of reference (and one more not referred therein) are involved in sessions case No. 98/86 pending before the District and Sessions Judge Bangalore for an offence under section 307 I.P.C. and in the interest of justice the reference in regard to those workmen has been split up and an award in regard to them will ensue in due course separately. Thus the present award relates only to the rest of workmen.

5. In the claim statement filed by the first party union the averments made, in brief are as follows:

The first party is a Registered Trade Union. The second party did not allow the workmen to raise any demand. The first party union then got affiliated to the Bharatiya Mazdoor Sangh. A letter dated 26-5-84 was sent to the second party about the same. The workmen are doing regular and permanent nature of work such as pruning grafting, budding, lumbing and are doing such other works of bullman, ploughing, carpentry etc. Even though they have put in service of 1 to 14 years, the second party is calling them as casual workmen. A demand was raised to make them permanent. The second party did not give them statutory minimum rates of wages. Some other demands were also made but the management did not respond. The Regional Labour Commissioner was then requested to intervene by a letter dated 2-7-84. The management refused to attend and discuss the matter, on the ground that the first party is

not a recognised union and that there is no industrial dispute. The second party intended to harass and victimise the workmen. Some workmen were assaulted by the men of the management. Another letter dated 3-6-84 was addressed to the management regarding assault of several workmen. The management had however written a letter dated 23-7-84 to the Regional Labour Commissioner and had contended that the first party union is not a recognised union and that the workmen are paid wages as per the notification dated 19-10-83. The said letter was replied by them and it was shown that the first party union is the only union and that the action of the management amounted to unfair labour practice. By a letter dated 16-8-84 the management contended that they did not make the workmen permanent and need not pay wages, according to minimum wage notifications, except the notification dated 19-10-83. The union replied the said letter by a letter dated 27-8-84. The first party union sought the intervention of some leaders but it was of no avail. The management has started harassing the workmen and stopped giving work to the workmen of watch and ward section on second saturday and Government holidays. Then a letter dated 21-1-85 was addressed to the Assistant Labour Commissioner. The management prevented the workmen from attending to their work on 19-1-85. They took help of the police to harass them. A letter dated 22-1-85 was sent to Assistant Labour Commissioner showing that the management had resorted to unjustified lockout from 19-1-85. On that day work was refused to 210 workmen and they were not permitted to go inside the gate. The first party addressed a letter dated 19-2-85 showing that the management had not allowed them to report for duty and therefore they were sitting at the gate. On 2-2-85 the management had lodged a complaint with the police and got some workmen arrested to crush the union. When the agitation continued another complaint was filed by them on 13-2-85 and got some more workmen arrested, in order of terrorise the workman. The management has not allowed the workmen, to report for duty except 26 workmen. In the letter to the A.L.C. dated 22-2-85 it was shown that the management had not permitted 184 workmen to work even though they had put in 3 to 15 years of service. A list of employees was enclosed to the same. Several joint meetings were called and the conciliation officer advised the management several times, but only some employees were permitted to report for duty. Still the management has not permitted to report for duty or it has not reinstated 89 workmen. Another letter dated 13-3-85 was addressed to the Assistant Labour Commissioner. Several other letters such as dated 1-2-85, 21-1-85, 22-1-85 and 22-2-85 were sent to the management. The conciliation officer was shown the said letters. A list of 89 workers was given to him. The management took a peculiar stand that it is not an industry. Some untenable reason were assigned for not making them permanent. In regard to the termination of many workmen, the management did not say anything. The workmen conducted many agitations and sathyagraha but the management ignored them. They wanted to recruit new workers. Then a suit was filed for injunction. The management is not justified in refusing work to 89 workmen w.e.f. 19-1-85. All of them have put in more than 240 days of continuous service. They are doing the work of permanent employees. They are

wrongly called as daily casuals. The action of the management is not bonafide. No notice was given to them, nor any letter was addressed to them to show as to why work was not given to them. The workmen have been victimised. The action of the management is in violation of articles 14 and 16 of the constitution. The workman have not been paid even minimum wages, and the second party has violated article 23 of the constitution. The second party is vindictive. They are not giving equal pay for equal work. The Assistant Labour Commissioner had directed the management to file a written statement and attend to the conciliation meetings on 28-1-85, 31-1-85, 28-2-85, 4-3-85 and 29-3-85 but the management did not attend any meeting. However, by a statement dated 14-3-85, the management alleged that the workmen have resorted to illegal strike. No workman had gone on strike. It was likewise pointed out to the Assistant Labour Commissioner. The Assistant Labour Commissioner was helpless as the management did not attend any meeting. He had no other go than to proceed exparte. Subsequent to the lockout, the second party went on taking back some of the workmen at various points of time. It was done like that to weaken the case of the first party. An award may be passed that the management is not justified in refusing to employ Nagaraj and 88 others and direct them to reinstate and give them all the consequential benefits.

6. The second party has filed its counter statement, and interalia it is contended as follows :

The second party has not recognised the said union. It has no locus-standi to raise the dispute. The dispute is not espoused properly. It is not tenable. The second party is wholly owned by Govt. of India. It is not engaged in any trade, business or calling. It is not an industry, as per section 2(s) of the Act. It is false that the second party refused work to the workmen. 33 workmen shown by them have been working with them. It has never refused to give work to any workman. The workmen themselves abstained from work. Some of the workmen resorted to criminal acts. On 2-2-85 they caused damage to their bus and injuries to some of the persons going in the bus. On their complaint a charge sheet was filed against nine workmen. The matter is pending in C.C. No. 617/85, in the court of C.J.M. Bangalore. They have resorted to commit murder of the Garden Superintendent and a case is pending against some of them. The second party is ready and willing to provide work to the first party workmen except to those who are involved in the criminal cases. It is not within their knowledge whether the workmen have organised an union. They have not recognised any union. It is true that the first party had written a letter that a number of workmen had joined their union. There was no obligation to reply the same. They had employed the first party workmen only on casual basis and not against permanent vacancies. Whenever permanent vacancies had arisen, they had absorbed the workman, working on casual basis. There is no power to absorb these workmen unless regular vacancies are available. Efforts are made to create some more posts. There is a ban on creation of posts. It is false that they have not implemented statutory obligations. They have implemented the minimum wage notifications. There is no obligation to implement the minimum

wages as shown in para 1.2 of the claim statement. They were not obliged to reply to each and every letter of the first party. The demands made by the first party were not reasonable and they were not legitimate. The second party has sent suitable replies to the Regional Labour Commissioner. It is false that the management has indulged in any act to crush the union. It is a research institution and no motive can be attributed. It is denied that Anjanappa and Bylappa were assaulted. An enquiry was conducted on the complaint of these workmen and it was found to be false. Another enquiry against supervisor Chandreshkar was also conducted and the allegations were found to be false. It is true that they had sent a letter to the Regional Labour Commissioner and that they had not recognised the union. The second party was justified in contending that they need not take any workman on permanent basis and need not pay wages according to minimum wage notifications except the notification dated 19-10-83. The second party is not aware of any protest meeting or about hand bills. It is false that on 19-1-85 they refused work to workmen. Ever since the inception of the second party efforts are made to create permanent posts. 90 posts of supporting staff have been created so far. The whole matter is being reviewed. The workmen indulged in criminal acts and they attempted to commit murder of the garden superintendent on 13-2-85. When the situation was beyond their control, they sought police help. The workmen themselves stopped attending to duty from 19-1-85. Their action amounts to illegal strike. It is false that the superintendent pushed the workers away from the gate. On 13-2-85 while taking attendance of the labourers, some labourers pounced on the garden superintendent and assaulted him with stones and deadly weapons and caused grievous injuries to him. In order to protect men and property of the second party, the second party sought the police help. Shri B. C. Mrithunjaya, the garden superintendent sustained serious injuries and his life was in danger. He was hospitalised for two months. The police have filed a case and it is pending at case No. 789/85. It is false that they prevented the workmen from attending to their work and that their action amounts to lock-out. It is not relevant whether the first party had written letters to them. It has no locus-standi. They have sent a reply to the conciliation officer. They have made it clear that no lockout was declared. The workmen did not report to duty and they were not interested in the employment. It was brought to the notice of conciliation officer that due to paucity of funds the matter of absorbing the casual workers was not done. The management has not terminated any workman from service, nor prevented them from attending to work. It was not necessary to conduct any enquiry. They were only casual workers, and there was no question of holding of any enquiry. The management may be permitted to establish its charges of assault. The filing of suit No. O.S. 125/84 has nothing to do with the present reference. The grounds put forth by the first party do not arise for consideration, because they did not refuse work to the workmen. It is false that the workmen are exploited. The contention in paras 'D' 'E' and 'F' of the claim statement are not sustainable because the union has only presumed that the services of 89 workmen have been terminated. They have not indulged in any unfair labour practice. The contentions raised in other paragraphs in the claim statement are false. The allegation that the management refused to attend the

conciliation proceedings is of no consequence as it was made clear that the workmen did not report to duty. The conciliation officer was helpless in not making the workmen to report to duty. Hence the conciliation failed. It is false that they went on taking some workmen, with a view to weaken the union. Some workmen voluntarily reported to duty. The reference may be rejected.

7. In view of the said pleadings, the following additional issues were raised.

- (1) Whether the I party proves that there is proper espousal to raise this dispute?
- (2) Whether the II party proves that they are not an 'INDUSTRY' as defined under Sec. 2(s) of the I.D. Act, 1947?
- (3) Whether the II party further proves that there was no refusal of work and the I party workmen themselves abstained from work?
- (4) Whether the I party proves victimisation and unfair labour practice on the part of the II Party?
- (5) What order?

8. The II party management has examined one witness and has got marked Exs. M-1 to M-3. The I party union has examined seventeen witnesses and thereafter a submission was made that since the evidence of other workman is prototype, permission may be granted to adduce evidence by affidavits. On 16-3-88, a considered order has been passed that the I party is permitted to adduce evidence by affidavits and that the II party may seek for the cross-examination of any witness who has filed the affidavits and may also adduce its own evidence by counter affidavits. Thereafter, the I party has filed affidavits of several workmen.

9. The II party has then filed the counter affidavits of MW-1 Mrityunjaya.

10. The I party has got marked Exs. M-1 to M-113.

11. Parties have been heard.

12. My findings on the additional issues and point of reference are as follows :

Issue No. 1

Yes

Issue No. 2

No

Issue No. 3

The II party has not proved that there was no refusal of work, or that the I party workmen themselves abstained from work.

Issue No. 4

The I party has proved that the II party was not justified in preventing them from work with effect from 19-1-85 for a period of one-and-a-half months.

Point of Reference and Issue No. 5

The management of Indian Institute of Horticultural Research Station, Bangalore was not justified in refusing to employ Shri S. Nagaraj and 60 others

with effect from 19-1-85 for a period of 45 days. They are entitled to the relief shown below.

REASONS.

Additional Issue Nos. 1 & 2

13. WW-17 A.R. Venkatarajan is the President of the I party union. He has stated that the I party Union is registered in 1977 and he has been taken as the President of the Union in 1983. In order to show that the workmen of the II party are the members of the Union, he has produced the receipt books at Exs. W-55 to W-82. The receipts show that the members of the union had paid the subscription from July 1984 to January 1985. Then he has produced the meeting book of the Executive Committee, Ex. W-83 and the book of the proceedings of the General Body meeting, Ex. W-84. Ex. W-83(a) is the resolution dated 1-5-1985. Ex. W-84 shows on page 35, resolution dated 25-12-84. It shows that the Executive Committee decided to affiliate itself to the Bharathiya Mazdoor Sangh and that the president was authorised to take further steps. The evidence of WW-17, the President of the I party further shows that on 30-12-84, a resolution was passed for espousing the cause of charter of demands. In pursuance to the Resolution Ex. W-84 (a), the President had written a letter dated 26-5-84. It is at Ex. W-12. The party union had produced the postal acknowledgement to show that copies of these letters had been addressed to various authorities. The acknowledgements are at Exs. W-13 (b) to W-13 (j). The case of the I party is that on 19-1-1985, the II party did not allow the workmen to go inside the research station and attend to their work. The evidence of WW-17 and the letter at Ex. W-90 disclose that on 19-1-1-85, the President addressed a letter to the A.L.C. Bangalore that on the morning of 19-1-1985 the workmen were prevented from attending to their duties, as a sequel to their agitation demanding absorption into permanent cadre. It is further alleged in Ex. W-90 that policemen were deployed at the gate and thus the workmen were prevented. He has been requested to intervene. On the very next day, the President WW-17 further wrote another letter Ex. W-91 and stated that as many as 210 workmen were at the gate on 19-1-85, but they had not been permitted to go inside. The documents at Ex. W-92 dated 1-2-85, W-3 dated 22-2-85 show that the president pursued the matter and complained that the workmen had been denied work. Ex. W-94 is the minutes of the conciliation meeting held on 29-3-85. The management had remained absent and the A.L.C. had heard WW-17, the President. Ex. W-95 is a copy of the constitution of the I party union. The learned counsel for the II party contended that no workmen had produced original receipt of subscription and the receipt produced by the I party union in counterfoils may not be accepted. The workmen examined for the I party are illiterate and it cannot be expected of them to preserve the subscription receipts. It was argued before me that there is no proper espousal of the dispute. On the other hand, it was submitted that if there is proper espousal on the date of the reference, it cannot be said that the reference cannot be maintained. The date of the reference is 14-2-1986 and as on that day, the I party union had the authority to espouse the cause of all these workmen. The I party has cited the case

of Bombay Union of Journalists Vs. The Hindu (1961 II L.L.J. Page 436). The principle laid down in the authority is that the court shall have to find out whether on the date of the reference, the dispute had the support of appreciable number of workmen or not. A reference has been made to the Western India Match Co., Vs. their workmen (1970 I L.L.J. page 256). Both these authorities support the submission made by the I party that there is proper espousal.

14. The learned counsel for the II party submitted that the I party had no authority to raise the dispute at all. In view of the aforesaid evidence, it is difficult to accept such a submission.

15. It was argued for the II party that though 89 persons (workmen) have been shown in the order of reference, only 71 of them have signed in the claim statement and that in the memo of appearance filed for the I party on 25-3-86, only 65 persons have signed. It is, however, conceded that on 9-5-89 one Hunumanthaiah has also signed but there is still no authorisation on behalf of all the 89 persons shown in the order of reference. The claim statement is filed by the Union and if the authorisation is by the president, it suffices to hold that there is proper authorisation. The objections raised by the learned counsel for the II party are technical in nature and in the face of the evidence to show that the I party union is the only union of the workmen of the II party and that by very nature of the dispute, it is a group dispute, I am of the view that they cannot be sustained. In my opinion, the espousal is in accordance with the law.

16. The learned counsel for the II party then contended that the II party is a research institutions and it is not an industry at all. The cross-examination of MW-1, the Garden Superintendent discloses in Paras 18 to 26 that incidentally products are sent to the sales section and they are sold on no profit and loss basis. He has been confronted with the bills and invoices and Exs. W-1 to W-12. It is admitted that they are issued by the II party. The I party has placed reliance on the case of Bangalore Water Supply and Sewerage Board Vs. Raiappa (1978 S.C.C. (L & S) page 215). The principles laid down in the authority indicate that even if there is no profit motive, the enterprise will be an industry. The evidence of MW-1 that the products are sold for no profit or no loss does not help the management. It is admitted in the counter statement itself that pretty large number of officers, research assistance and workmen put in their joint effort in the research work. In my view there is no force in the contention that the II party is only a research institution and that it is not an industry or that it is not an industrial dispute. The evidence produced by the I party proves that the II party is an industry and that there is proper espousal.

Issue Nos. 3, 4, 5 and Point of Reference

17. Issue Nos. 3, 4 and point of reference are inter-related and they are taken up together.

18. On the one hand, the management contends that they never prevented any workman from entering in to the research station and doing his work, at any time on or after 19-1-85. On the other hand,

it is contended by the I party workman that about 210 workmen had gone to the Institute on the morning of 19-1-85, but the management did not permit them to enter inside the Institute and attend to their work. The I party has examined as many as 16 workmen, WW-1 Venkataramanappa, WW-2 Hanumanthaiah, WW-8 Rajanna, WW-4 Ramakrishna, WW-5 Narayanappa, WW-6 Nanjanna, WW-7 Channabasamma, WW-8 Puttara-nagamma, WW-9 K. Venkanna, WW-10 M. Srinivasa WW-11 M. Muniappa, WW-12 Hanumanthappa, WW-13 V. Venkanna, WW-14 T.V. Lakshmaiah, WW-15 Muthayappa and WW-16 D. Venkatesh. To prove that they had gone to the research institute on the morning of 19-1-1985 but they were prevented from going inside and attending to their work. The I party has further filed the affidavits of about 32 workmen. All of them have sworn that they had gone for work at about 8.30 a.m. on 19-1-85, but the management prevented them from going inside and attending to their work. In the counter affidavit of MW-1 filed on 3-5-88, it has been contended that at no point of time either on 19-1-85 or for a period of 1½ months thereafter the management had ever prevented the workmen from attending to their work. The I party union has filed even the affidavits of some of those workmen who are involved in the criminal case and the reference in regard to whom has been split up and kept aside. The learned counsel for the II party has not sought for the cross-examination of any of these persons who have filed their affidavits, except those who are involved in the criminal case. Since the case of those workmen who are involved in the criminal case is not considered in the present award, it is not necessary to dwell upon the affidavits filed by them. The affidavits of the rest of the workmen fortify the evidence of WW-1 to WW-16 in showing that all of them had gone for work on 19-1-86, but the management prevented them. The learned counsel for the II party strongly contended that there are many contradictions in the evidence of these workmen and that their version that the management prevented them cannot be believed. The question whether the workmen were prevented from entering into the premises of the II party and from attending to their work requires to be examined in the light of the subsequent conduct of the parties and the documents relied upon by them. The alleged contradictions in the cross-examination of these workmen cannot be the criteria to disbelieve them. It is not a criminal case wherein the point in issue is to find out whether a person was actually allowed to go inside or prevented to go inside at a specific point of time and if so by which person and in the presence of which witness. The appreciation of evidence requires a broader outlook and the guiding factors shall have to be subsequent conduct, circumstances and the documentary evidence.

19. The I party president has addressed the letter Ex. W-90, at the earliest point of time when the II party prevented the workmen from attending to their work on 19-1-85. The letter Ex. W-90 bears the seal of the office of the R.L.C., Bangalore showing that it was received at the said office on 21-1-1985. WW-17, the President has specifically

complained that on 19-1-85 when the workmen had gone for work, they were prevented from attending to their duties and that policemen had been deployed at the gates and thus the action of the management amounted to unfair labour practice. On the very next day, WW-17 has written another letter Ex. W-91 to the A.L.C. and has complained that the management has resorted to unjustified and illegal lock-out with effect from 19-1-85 and that 210 employees have been without work. Ex. W-91 discloses that 210 workmen had been informed at the gate itself that they will not be permitted to work and they should go away. It is further stated that when the workers asked for the reasons, the management refused to give the reasons and the A.L.C. was requested to intervene and to see that the lock-out was lifted. The evidence of WW-17, the President Venkataraman thus shows that on 1-2-1985, he further addressed a letter to the A.L.C. as per Ex. W-92 that after receiving the photostat copy of a letter of the management dt. 28-1-1985 on 31-1-1985 all the workmen had gone for work, but they were not allowed to go inside and through the Sub-Inspector of Police they were actually prevented. Ex. W-92 further shows that as per the letter of the management sent by the A.L.C. to the I party, the management had stated that all the workmen were welcomed for duty except three persons, but when the workmen reported for duty, none was permitted to go inside. The A.L.C. was therefore requested to instruct the management to permit the workmen to report to duty on 2-2-1985 or at least positively from 4-2-85 or at least positively from 4-2-85. The letter Ex. W-92 substantiates the evidence of WW-1 to WW-16 and the affidavits of other workmen in showing that from 19-1-1985 till 1-2-85, the II party had prevented the workmen from entering into the Institute, though the A.L.C. had been informed that all the workmen, except three may come and report to duty. Ex. W-93 dt. 22-2-85 by the President WW-17 to the A.L.C. discloses that right from 19-1-85, the management was continuing the lock-out by refusing the workmen to go inside and police force had been used to prevent them. Ex. W-94 further shows that the President had written another letter to the management not to refuse 184 workmen who had put in service of 3 to 15 years and to instruct the management to allow them to report for duty. The I party has then pointed to the letter Ex. W-85 dt. 13-3-85. It shows that in the meanwhile the I party had been informed of the letter of the management dated 28-2-85 and as a reply to the same, the I party had sent Ex. W-85. The I party union has denied the allegations that on 2-2-85 some workmen had stoned the Institute's bus or that on some other day some other workmen had attempted to murder the farm superintendent. Ex. W-85 further states that 89 workmen as shown in the enclosed statement had been told that they will never be permitted to report for duty and thus the lock-out since 19-1-85 had still continued. The A.L.C. was requested to intervene and to direct the management to see that the lock-out was lifted. In the claim statement itself the I party had contended that the management had permitted only a few of the workmen to report and it had been done like that with a view

to weaken the union. It is admitted in the counter statement that some other workmen reported to duty on different dates. It escapes one's imagination as to how the workmen can abstain from reporting to duty if others had been permitted to work. It is not the case of the II party management that there was any rival union or there was any rivalry between groups of workmen or that there was even any groupism in the body of workmen. The letters written by WW-17, the President to the A.L.C. thus point out to the fact that the management had effectively prevented some workmen, whereas some others had been permitted to report and attend to their work. The evidence of WW-17 shows that after Ex. W-85 was sent to the A.L.C. the Conciliation proceedings were initiated. Ex. W-86 is the conciliation file. The minutes of the conciliation held on 29-3-85 are to be found at Ex. W-94. In the said meeting the management had remained absent. WW-17, the President of the Union was present. The A.L.C. took into account the contentions raised by the President and then examined the written statement sent by the management and again heard the I party union in reply to the allegations made by the management and found that since there were divergent views conciliation was not possible and though the union was prepared for an arbitration, the management was not willing for the same and thus the conciliation had failed. It is important to note that in their written statement sent to the A.L.C. the management had requested to treat the dispute as closed. In the claim statement itself, the I party union has asserted that the A.L.C. had made several attempts to hold the joint meetings but the management did not respond. The minutes of the conciliation proceeding Ex. W-94 support the said statement made in the claim statement. In the counter statement, the II party has time and again contended that there was no obligation on its part to reply to the letters of the I party union, for it was not recognised by them and secondly, in their opinion the II party was not an industry. The learned counsel for the II party did not point out to any shred of evidence to show that the management ever appeared before the conciliation officer or made any attempt to find out who were the workmen, who had reported for duty but allowed to have been prevented from doing so. It is not the case of the II party that they issued any general notice to all the workmen nor any individual notice to any workman that they had or he had proceeded on illegal strike and that if he had any intention to report for duty, he may do so forthwith. It was urged before me that since they were casual and daily rated workmen, no such notice or any disciplinary action was called for. The said contention does not deserve any consideration, since in the claim statement itself the I party has shown that all these workmen have put in service ranging between two to fourteen years. Merely because the workmen have suffered to work as daily rated casuals for about 14 years, it does not follow that on 19-1-85 also they were only daily rated casuals. In para 7 of his evidence, WW-17, the President has sworn that they had moved the State Government and the State Government had issued a notification in Kannada Prabha on 29-12-85 to take back all these workmen. It is at Ex. W-113.

The subsequent conduct of the II party is not consistent with their case that they had kept their doors open for all these workmen so that any of them may go and report for duty on any day. The letters of WW-17, the President to the A.L.C. and the minutes of the conciliation proceedings and Ex. W-113, the paper publication as described above are consistent only with the case that the II party had prevented most of the workmen from reporting and attending to the work and had allowed only some of them at their discretion to report and attend to their work on various dates subsequent to 19-1-85.

On 7-4-1988, the I party union has filed the affidavits of 7 workmen shown below :—

- (1) Sri Shivandaiah
- (2) Sri Anjanappa
- (3) Sri M. Narayana
- (4) Sri V. Narayanappa
- (5) Sri Hanumantharayappa
- (6) Smt. Hanumakka
- (7) Smt. Gangamma

and on 11-4-88 of one employee, Jayamma.

On 26-7-88, the I party union has further filed the affidavits of 20 workmen as shown below :—

S/Shri

- (1) S. Jayaram
- (2) G. Dasappa
- (3) M. Muniraju
- (4) Vazeer
- (5) Jayaram
- (6) T. Ramamurthy
- (7) Rudraiah
- (8) G. Muniraju
- (9) D. Hanumantharayappa
- (10) Hanumanthappa
- (11) M. Venkatswamy
- (12) R. Nagaraja
- (13) Nazir Khan
- (14) Jayaramaiah
- (15) S. Srinivasamurthy
- (16) Ambigaiah
- (17) S. Rasavarajajah
- (18) N. Hanumanthappa
- (19) Ragavendra Rao M. A.
- (20) L. Rajanna.

On 1-8-88, the affidavit of the following three workmen have been filed.

- (1) Channegowda
- (2) Lekshmana and
- (3) M. Hanumantharayappa

On 20-4-88, the affidavit of V. Narayanaswamy has been filed. On 8-6-88, by I.A. No. VI, the workmen at Sl. No. 64 Hanumanthappa sought for permission to sign the claim statement. He was permitted. On 20-6-88, the I party has filed the affidavit of Hanumanthappa S/o Muninanjappa. The affidavits of these workmen also show that on

19-1-1985 they had gone for work, but the management refused to admit them. It is reiterated that these affidavits substantiate the evidence of WW-1 to WW-16 and the documents as discussed above.

The I party had filed an application I.A. No. 3 on 12-1-1987 and inter alia it was contended that though the reference has been made in respect of 89 workmen, the claim statement had been filed in respect of only 68 workmen and out of 68, they had specifically pointed out the names of 39 workmen, who have been insisting upon for reinstatement and as regards the rest of 29 workmen there is a criminal case. It has been alleged in I.A. No. 3 that in order to see that the workmen are not taken back, the management had cleverly refused to appear before the conciliation officer and that they have taken back only about 20 workmen and since in the counter statement, it has been stated that the workmen may come and join, the said application had been filed. The then presiding officer of the Tribunal has passed a considered order on I.A. No. 3 on 29-1-1987. Therein, the II party has been directed to take back to work 15 workmen shown therein. The proceedings before this Tribunal themselves go to indicate that even after the parties had appeared before this Tribunal and filed their pleadings, some of the workmen had not been taken back.

The case of the II party virtually means that the workmen had abandoned voluntarily. The theory of abandonment propounded by the II party runs contrary to the proceedings that had taken place before the conciliation officer and also the proceedings which culminated in passing of the order on I.A. No. 3. On 16-4-87, the I party filed an application contending that by virtue of the order passed on I.A. No. 3, 15 workmen had been taken back but still 12 more workmen who are not involved in the criminal case were not taken and that the Tribunal may direct the II party to take them. The names of 12 workmen have been shown therein. By an order dated 24-6-87, the II party was called upon to take them back. The record thus shows that even after the matter was referred to this Tribunal, the Tribunal had to pass orders twice directing the II party to take back 20 and 12 workmen respectively. The subsequent events lend support to the case of the I party that the II party did not reinstate the aforesaid workmen at any time after 19-1-85.

17. The II party has examined only the Garden Superintendent MW-1 Mrityunjaya. In para 9, he states that it is false to say that the II party refused work to these 89 workmen with effect from 19-1-85. In para 11 of his evidence he swears that on 13-2-1985 the persons shown in the chargesheet Ex. M-1 tried to murder him, but the loyal workers protected him and then the police came and arrested them. Even supposing that some of the workmen had indulged in violent acts on 13-2-1985, there is still no explanation from the management as to why the workmen were not allowed to work between 19-1-85 and 13-2-85. The case of the workmen involved in the criminal case as per Ex. M-1 has been split up and it is not necessary to discuss in regard to their claim. In para 32 of his evidence MW-1 admits in the cross-examination that these workmen might have put in 1 to 14 years of service. In regard to the letters addressed to the management by the

union as per Exs. W-13, W-14, W-18, W-19 the witness states that the management might have received them. In para 57, he states that they might have received the failure report of the conciliation officer as per Ex. M-20. Similarly, in regard to the letters Ex. W-21 to W-29 he states that the management might have received them. Ex. M-2, the letter dated 28-1-85 sent by the Director of the II party to the ALC, shows that the management contended there was no lock-out and that the allegations made in the letter dated 22-1-85 were false and that all the workmen except the three were welcome for duty. The oral and documentary evidence produced by the I party is eloquent enough in proving that the statement made by the II party that all the workmen except three were welcome for duty did not carry the intention to do so. It is admitted by MW-1 that Ex. W-15 dated 23-4-84 and Ex. W-16 dated 16-8-84 are the letters sent by them. These two letters and the evidence of MW-17, the President of the I party union show that even prior to 19-1-1985, the II party management did not relish the idea that the I party workmen had organised an union and that the union had taken up the cause of the workmen to see that proper wages were paid to them. The letter of the A.L.C. dated 30-3-85, Ex. W-20 to the Secretary, Ministry of Labour shows that on receipt of the dispute both the parties were requested to attend joint meetings and the management had been directed to submit its written statement but in spite of the opportunities given on 28-1-85, 31-1-85, 28-2-85, 4-3-85 and 29-3-85, the management did not attend at all. But had sent a written statement dated 14-3-85 alleging that the workmen had resorted to illegal strike with effect from 19-1-1985. The A.L.C. has further observed that the dispute has been posted for conciliation on 29-3-85 but the management did not attend and the matter was proceeded with ex-parte. Ex. M-20, the report of the conciliation officer further substantiates the case of the I party workmen. In para 46 of his evidence, MW-1 Mrityunjaya concedes that when the workmen did not report for duty on 19-1-85, the II party did not write to them that they should report forthwith or should explain for their absence. In para 47, it is admitted that no enquiry has been held against them. In para 58 of his evidence MW-1 states that they might have attended the conciliation proceedings. A specific suggestion has been made to him in Para 59 that no offer was made during the conciliation proceedings that the workmen may go for duty and start working. The minutes of the conciliation proceedings and the report of the conciliation officer belie the statement made by MW-1 that the management ever attended any meeting or even made any offer that the workmen may go back to work and start working. In para 67 of his evidence MW-1 concedes that the management might have received the letter dated 28-12-1984, Ex. W-25. It deals about the grievance of the workman of the watch and ward section that they were not permitted to work on second Saturdays and holidays. Ex. W-112 letter dated 17-4-84 spells out the grievance regarding payment of bonus. The motive for the trouble that started on 19-1-1985, as put forth in the claim statement has been further substantiated by Ex. W-25 and Ex. W-112. In para 67 MW-1 states that the management might have received Ex. W-26 letter dt. 19-2-1985. In Ex. W-26, WW-17 has pointed out that the conciliation meetings were called on 23rd

and 24th and 28th of January, 1985 and though the workmen and the president of the union were present, none had appeared on behalf of the management and workmen were not allowed to report for duty. In connection to Ex. W-27 the letter dated 17-1-86, MW-1 states in Para 68 that the management might have received the same. The I party has again requested the management to take back these workmen since they are starving and that more than 50 per cent of them belong to Scheduled Castes and Tribes. There is a similar answer by MW-1 in regard to the letter Ex. W-29 dt. 20-1-85. Ex. W-29 is enclosed with the postal acknowledgement due of the II party. The contention of the I party is that on 19-1-1985, the management had refused them work. The letter Ex. W-29 is thus the earliest protest lodged by the I party with the II party. Ex. W-29 was also sent under certificate of posting. The certificate of posting bears the postal seal of 20-1-1985. It is enclosed to Ex. W-29. The I party has thus established that at the earliest opportunity it has protested against the action of the II party in preventing the workmen from attending to their work on 19-1-1985. In para 87 of his evidence, MW-1 however asserts that the labour department was told that the II party had not stopped the workmen from attending to their work and that they were welcomed at any time. He has further sworn that the labour department was informed about it in writing. No office copy of such letter has been produced. The only document produced on behalf of management in that connection is Ex. M-2 and it has been already discussed as to how the management did not intend to take the workmen back though a statement was made to that effect therein. The I party union has filed interview cards, certificates appointment orders of some of these workmen at Exs. W-31, W-35 to W-54 and W-97 to W-111. It is not disputed by the II party that all these workmen had been working with them. The I party has relied upon the documents as Exs. W-32 to W-34 to show that pamphlets and hand bills had been published and that there were also demonstrations and satyagraha. The subsequent conduct of these workmen following the incident on 19-1-85 in putting these pamphlets and hand bills as Exs. W-32, W-33 and W-34 is consistent only with the case that the II party had refused to admit them inside.

18. The I party has submitted that the documents at Exs. W-13, W-14, W-17, W-21, W-22 and the oral evidence produced by them lead to an irresistible conclusion that the II party had indulged in victimisation and unfair labour practice and that the workmen are entitled not only to reinstatement, all the back wages, continuity of service and costs etc. in the counter statement, it is alleged in para 3 that on 2-2-85, some workmen had resorted to criminal acts and had stoned at the bus of the Institute and some occupants of the bus had been injured. It is further alleged that the complaint has been filed and nine workmen have been chargesheeted and the case is pending in the court of the Chief Judicial Magistrate at C.C. No. 617/85. Then in Para 19 of the counter statement, it is further alleged that there was an attempt on the life of the garden superintendent Shri B.C. Mrityunjaya and that a criminal case is pending at S.C. 789/85. It is an admitted fact that the criminal case is going on against 23 workmen as observed earlier. Though it is manifest from record that the manage-

ment had prevented all the workmen except a few from reporting to duty and attending to their work since 19-1-85, these incidents of 2nd February 1985 and 13th February 1985 involving nine and twenty-eight workmen lead to an inference that the I party is not justified in contending that the II party had indulged in victimisation and unfair labour practice. It is patent from the evidence of MW-1 that the officers and the loyal workmen of the II party had their own duties and responsibilities for the institution and if they had tried to safeguard the lives and property of the II party by preventing some of the workmen, who had indulged in criminal case, it cannot be said that there was any intention to victimise any workman or to indulge in unfair labour practice.

19. The evidence of WW-1 to WW-16 and the affidavits of several other workmen, as discussed above pointedly show that only for 1½ months from 19-1-85 they went on attending at the gate of the institution. The I party has not produced convincing evidence that the workmen went on reporting at the gate of the institution even after 45 days of 19-1-85 or that they were not otherwise employed from the date of 45 days subsequent to 19-1-85 till their respective dates of reinstatement. Under such circumstances, it cannot be said that all the workmen concerned in this award are entitled to back wages until their respective dates of reinstatement. In my opinion the evidence proves that the workmen are entitled to back wages only to a period of 45 days from 19-1-85 and if any of them has been reinstated prior to 45 days from 19-1-85, such a workman will be entitled to back wages only for the period between 19-1-85 and the date of his reinstatement (which must be prior to the 45 days).

20. Lock-out has been defined in section 2(1) of the I.D. Act. It means the temporary closing of a place of employment, or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him. The word strike has been defined in Section 2 (q) of the I.D. Act, and it means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment. The evidence produced by the II party management does not prove that on 19-1-85 all these workmen or a part of them or a number of them had taken a concerted action to refuse to work or stopped going for work. On the contrary, the evidence produced by the I party manifest on the point that for months together and even before this Tribunal they had to agitate repeatedly to get back to work. The evidence produced by the I party has established the act that the II party had refused to admit most of these workmen except those as shown in the statement Ex. M-3. The contention of the II party that the I party workman had resorted to illegal strike or that voluntarily abandoned work is shown to be not true.

21. The I party has placed reliance on the case of Buckingham and Karnataka Co. Ltd. Vs. Venkataiah (1963 II L.L.J. SC. Page 638 and it was urged that in order to constitute that any workmen had abandoned his duties, there should be evidence to

indicate that he had no intention to resume whereas the evidence shows that the workmen tried to get back the work since 19-1-85 itself. In the light of the principles laid down in the authority, I find that the II party has not established any case of abandonment or illegal strike.

22. MW-1 Shri Mrityunjaya has filed counter affidavit after the aforesaid workmen had filed their affidavits. It has been stated therein that there are 6 gates to the garden and that the workmen have not stated as to which of the gates were closed and that it is false to say that for one and half months they regularly attended at the gate but they were prevented from going inside. He has further stated that these workmen were asked to do certain work but they refused to carry out the work assigned to them on the ground that the assignment of work should be made by their own union leader and not by the management and in spite of such refusal, the management did not prevent them from carrying out their work. It has been already observed that the point in issue is not whether at a specific time on a certain day, a certain number of workmen were not allowed inside through the designated gate, but there shall have to be an overall appreciation of the evidence to find out whether the workmen themselves absented from work or whether it was the management which prevented them from entering into the garden and attending to their work. On going through the evidence of record, I find that there is no force in the contention of the II party that the workmen have not proved as to which of the gates were closed and how they were prevented from going inside. The contention raised in the counter affidavit that the workmen refused to do specific kind of work and they told the management that they will do the work assigned by the union leader is a new case which has not been pleaded in the counter statement nor sworn to by MW-1, while he was examined in the box. It appears to be an afterthought. MW-1 has further stated in his affidavit that the I party union has not been recognised and at the instigation of the I party union, the workmen had stayed away from work. The question whether the I party is a recognised union or not is not pertinent. There is no evidence produced by the II party to show that the workmen themselves stayed away from work.

23. In the counter affidavit MW-1 Mrityunjaya had stated that Hanumanthappa S/o Munianjanappa did not report to duty at any time and even after the order passed by his Tribunal and that it is believed that he was gainfully employed elsewhere. Since the award being passed is restricted to the back wages of a specific period, I find that it is immaterial whether he had not presented himself for work, after this Tribunal passed an order for taking back the workmen.

24. The counter affidavit filed by MW-1 Mrityunjaya shows in Para 7 that the claim relating to the workmen involved in the criminal case cannot be decided on the basis of their affidavits. As has been already observed, the case of these workmen involved in the criminal case has been split up and three is no question of passing any award in their favour. In para 8 of the counter affidavit, it has been stated by MW-1 that some workmen were working elsewhere

and they have not reported for work and that they are not entitled to any wages. The contention that it is a strike has not been accepted. The said statement made by MW-1 in the counter affidavit filed on 2-8-88 is thus of no avail.

25. In regard to the claim of back wages, the I party endeavours to rely upon the following authorities :—

- (1) Mohan Lal Vs. Bharat Electronics Ltd. (1981 II L.L.J.) Page 70.
- (2) Delhi Cloth and General Mills Limited Vs. Shambunath Mukherjee and others (1978 I L.L.J. Page 1).
- (3) Hindustan Tin Works Vs. its Employees (1978 II LLJ. p. 477 at Para 9).
- (4) Gujarat Steel Tubes Limited Vs. G.S.T. Mazdoor Sabha (I L.L.J. Page 137).

It emerges from the principles laid down in these authorities that whenever there is illegal termination of service, the workmen will be entitled to reinstatement and full back wages. But in the context of the facts and circumstances of the case, I find that full back wages cannot be granted, for the simple reason that there is no evidence that beyond 45 days from 19-1-85, the workmen were not gainfully employed. Hence, the award cannot be for full back wages.

26. In para of the counter statement, the II party has contended that as many as thirty three workmen shown therein below have been working with them. Some of these thirty three workmen shown in the counter statement have also signed the claim statement. It was submitted that some persons whose names found in Para 3 of the counter statement have not approached the I party union and have not signed the claim statement nor the letter of authorisation and that they are not entitled to any relief.

27. Since some of the 3 workmen shown in Para 3 of the counter statement have not approached the I party union, and they have not subscribed to the claim statement nor the letter of authorisation, there is no claim on their behalf and no award can be passed in their favour.

28. 28 persons have been chargesheeted as per Ex. M-1, but Sl. No. 11 Shri N. Srinivasa, S/o Narayanappa shown in the chargesheet has not signed the claim statement and his case has not been espoused by the I party. No award is passed relating to the said Shri N. Srinivasa, S/o Narayanappa. Though two person shown at Sl. No. 54 Shri N. Venkateshappa and Sl. No. 65 Ramakrishna have not signed the claim statement, it has been pointed out that they have signed the letter of authorisation and that they have filed their affidavits and that they are also entitled to the same relief. In my view, the evidence on record proves that they are entitled to the relief as awarded.

29. In the result an award is passed to the effect that the management of Indian Institute of Horticultural Research Station Bangalore was not justified in refusing to employ the following thirty-six workman from 19-1-1985.

Sl. No. shown No. in the List appended to the Order of Reference	Name and Father's Name	Sl. No. shown No. in the list appended to the Order of Reference	Name and Father's Name
1.	2 Nanjamma W/o Doddamanumanthappa	1.	1 S. Nagaraju S/o Siddaiah
2.	4 S. Anjanappa S/o Sanjeevaiah	2.	3 Venkataramanappa S/o Yellappa
3.	5 Muniraju S/o Venkata Yellappa	3.	6 H.S. Venkatesh S/o Shankarappa
4.	7 V. Narayanappa S/o Venkataramanappa	4.	8 T. Ramamurthy S/o Thayappa
5.	10 Hanumakka W/o Munikempaiiah	5.	9 M. Venkataswamy S/o B. Munivenkatappa
6.	13 Anjinappa S/o Linganna	6.	11 Ambigalah S/o Ramaiah
7.	16 Muniyappa S/o Lingannappa	7.	12 Hanumantharayappa S/o Hanumaiah
8.	17 M. Narayana S/o Marappa	8.	15 S. Venkatesh S/o Sadappa
9.	18 Hanumantharayappa S/o Bylappa	9.	30 D. Hanumantharayappa S/o Dasappa
10.	19 Hanumanthaiiah S/o Venkatappa	10.	32 R. Nazir Khan S/o Rahimkhan
11.	20 M. Muniyappa S/o Marappa	11.	33 L. Rajanna S/o Lakshmaiah
12.	23 D. Nagaraju S/o Dasappa	12.	37 S. Jayaram S/o Siddappa
13.	25 Venkanna S/o Venkatappa	13.	39 G. Dasappa S/o Ganganna
14.	28 Hanumantharayappa S/o Venkatalakshmaiah	14.	48 Rudraiah S/o Muriyappa
15.	29 K. Venkanna S/o Doddakempaiiah	15.	53 M. Hanumantharayappa S/o S. Muniyappa
16.	31 C. Hanumantharayappa S/o Chikkabylappa	16.	59 Lakshmana S/o Venkataramanappa
17.	34 L. Srinivas S/o Lakshmaiah	17.	63 M. Muniraju S/o Munivenkatappa
18.	35 Y. Rajanna S/o Yellappa	18.	64 G. Muniraju S/o Govindappa
19.	41 B. Narayanappa S/o Venkatappa	19.	67 Channegowda S/o Hanumaiah
20.	43 M. Lakshmaiah S/o Muniswamappa	20.	69 Hanumanthappa S/o Narasaiah
21.	49 T.V. Lakshmaiah S/o Venkataramanappa	21.	71 Jayaramaiah S/o Shamauna
22.	54 N. Venkateshappa S/o Narasappa	22.	72 N. Hanumanthappa S/o Nagaiiah
23.	62 Channabasanma W/o Marthinjundiah	23.	76 Jayaram S/o Papannaiah
24.	65 Ramakrishna S/o Narayanappa	24.	79 S. Srinivasamurthy S/o S.K. Soorappa
25.	66 Anjanappa S/o Chikkaanjanappa	25.	81 Raghavendra Rao M.A. S/o B.V. Aswathanarayana Rao
26.	68 V. Narayanaswamy S/o Venkataramanappa	26.	82 S. Basavarajalah S/o Shivarudrappa
27.	70 Nanjamma W/o Narasiah	27.	87 R. Nagaraju S/o Rajashekara Aradhya.
28.	73 Ganganna W/o M. Hanumaiah		
29.	74 Hanumanthappa S/o Muriannanappa		
30.	75 Vazcer S/o Kareem		
31.	77 M. Mallaiiah S/o Nanjappa		
32.	80 Shivarudraiah S/o Chennaaveeralah		
33.	84 Ganganna S/o Muniathayappa		
34.	86 D. Venkatesh S/o Dasappa		
35.	88 Jaya W/o Thimmarayappa		
36.	89 Puttarangamma W/o Mallappa		

(Dictated to the Personal Assistant, taken down by her
got typed and corrected by me.)

B. N. LALGE, Presiding Officer
[No. L-420(1/7/85-D.I.L.B)]
HARI SINGH, Desk Officer

30. It is further directed that the II party shall reinstate
Sl. No. 74 Hanumanthappa S/o Manianjanappa.

31. It is further awarded that the II party shall give all
the above shown thirty-six workmen continuity of service
and shall give all the consequential benefits except that back
wages shall be paid for a limited period of 45 days from
19-1-1985.

32. It is, however, made clear that back wages of 45 days
shall be paid to all the aforesaid workmen, if they have not
been reinstated before any date upto 45 days from 19-1-85
and in case they have been reinstated before that date, such
workmen shall be paid back wages only for the period falling
short of 45 days.

33. The reference against twentyseven persons shown
below has been split up and given a separate number and it
will be decided in due course soon after the criminal case
pending against them is finally decided.

नई दिल्ली, 18 नवम्बर, 1988

का. प्रा. 3575.—औद्योगिक विवाद प्रसिद्धि, 1947 (1947
का. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व भारतीय खाद्य
निगम, टोटलपट्ट, जिला-बोकारो (उड़ीसा) के प्रबंधन के सम्बन्ध
निर्वाहकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक
विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचपाट को प्रकाशित करती
है, जो केन्द्रीय सरकार को 7-11-88 को प्राप्त हुआ था।

New Delhi, the 18th November, 1988

S.O. 3575.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of District Manager Food Corporation of India, Titlagarh, Distt.

Bolangir and their workmen which was received by the Central Government on the 7-11-1988.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

Industrial Dispute Case No. 62/1987 (Central)
Dated Bhubaneswar, the 26th October, 1988.

BETWEEN

The Management of District Manager,
Food Corporation of India, Titlagarh.

... First Party-Management.

AND

Their workmen Sri K.S. Rao, Sri G. Nayak, Sri T. Patel, Sri R. Rama Rao, Sri J. Singh, Sri D. Pradhan and Sri Bharsagar, F.S.D. of F.C.I., Dunggripally, Dist. Bolangir.

... Second Party-Workmen.

APPEARANCES :

Sri P. Dhanraj, Dist. Manager—For the First Party-Management.

Sri K. S. Rao & others—For the Second Party-Workmen.

AWARD

1. The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) by their Order No. L-42011/36/36-D.II(B) dated 7th October, 1987 have referred the following dispute for adjudication:—

“Whether the action of the District Manager, Food Corporation of India, Titlagarh, Dist. Bolangir in terminating Sri K. S. Rao, (2) G. Nayak, (3) T. Patil, (4) R. Rama Rao, (5) J. Singh, (6) D. Pradhan and (7) A. Bharsagar from service with effect from 1st June, 1986 is legal and justified? If not to what relief are the concerned workmen entitled.”

2. The Food Corporation of India had a Food Storage Depot at Dunggripally in the district of Bolangir under the control of the District Manager, Titlagarh. The second party-workmen worked in the said Food Storage Depot as casual labourers (Watchmen) for many years but were disenagaged with effect from 1-6-1986. According to the workmen such disenagagement amounted to illegal retrenchment. They approached the District Manager, Titlagarh with a request to allow them to continue in service and also to regularise them but their request was not acceded to. Consequently, they raised an industrial dispute which was conciliated. The conciliation having failed, the present reference was made. The workmen categorically alleged in their statement of claim that each of them had rendered 11 to 12 years of service to the Food Corporation of India before they were thrown out of employment.

3. The First Party, namely, the District Manager, Food Corporation of India, Titlagarh, filed written

statement challenging the maintainability of the reference on the ground that the second party were not “workmen” under the First Party within the meaning of the Industrial Disputes Act and also on the ground that the second party members never made any demand before the appropriate authority alleging illegal retrenchment giving rise an industrial dispute. The Management’s case as would appear from the foresaid written statement is that the second party members did not render 11 to 12 years of service as alleged by them and that they never worked for 240 days during the preceding 12 months from the date of discontinuance of their employment and that they were purely casual labourers engaged occasionally on the basis of ‘no work, no pay’. According to the First Party-Management, the members of the second party never worked against regular vacancies and therefore the Circular issued by the F.C.I. headquarters instructing that the casual employees who did not fulfil the conditions of appointment should be retrained on the payment of compensation, did not apply to them.

(4) If there has been termination of services of issues were framed :—

ISSUES :

- (1) If the reference is maintainable?
- (2) If there exists no industrial dispute between the First Party/Management and the second Party?
- (3) If the second party were not ‘workmen’ under the First Party-Management?
- (4) If there has been termination of services of the concerned workmen by the Management with effect from 1st June, 1986?
- (5) If such termination is legal and/or justified?
- (6) To what relief, if any, the second party-workmen are entitled?

FINDINGS

5 Issue No. 2.—So far as Issue No. 2 is concerned which relates to the question about existence of an industrial dispute between the parties, the First Party-Management stated in the written statement that the workmen having not raised any demand with regard to their alleged retrenchment before the appropriate authority, no industrial dispute can be said to have come into existence.

In this connection I may refer to paragraph 7 of the statement of claim filed by the second party members in which they have stated that being retrenched by the Asst. Deputy Suptd., Dunggripally, they represented to the Dist. Manager, F.C.I. Titlagarh and requested him to allow them to continue in service and to offer them regular appointment since all of them had crossed the minimum age limit and had no scope of appointment in any other organisation. In paragraph-11 of the written statement of the First Party—Management wherein the contents of paragraph-7 of the statement of claim has been denied, there is no specific denial of the fact that the second party members approached the Dist. Manager, F.C.I. Titlagarh requesting him to allow them to continue in service and to give them regular appointments. Sri K. S. Rao, one of the second party members

examined as W.W.1 stated in his evidence that he and the other workmen who had been retrenched, demanded reinstatement after such termination and in this connection they met the Dist. Manager, F.C.I. Titlagarh and the Regional Manager, F.C.I. Bhubaneswar. No cross-examination was made to them in this respect.

In the circumstance, I would hold that the second party members after termination of their employment, did demand reinstatement before the appropriate authority alleging that the termination was not legal and as such an industrial dispute between the parties did come into existence.

6. Issue No. 3.—So far as this issue is concerned, it is the case of the Management that the second party members are not 'workmen' in the employment of the Food Corporation of India, Titlagarh, in as much, as, they were employed occasionally on the basis of 'no work, no pay' and were pure casual labourers. The Management further stated that the second party members never served under the Food Corporation of India, Titlagarh for 11 to 12 years as alleged and that they also did not work for 240 days during the preceding 12 months from the date of discontinuance of their employment.

In this connection I may refer to the evidence of W.W.1 K. Sanyasi Rao who proved a copy of the statement showing engagement of individual casual watchmen and casual labourers in the Food Corporation of India, Dunggripalli from 1974 to 1985 marked as Ext. 1. He also proved a copy of another statement which was submitted by the Asstt. Depot Suptd. of the Food Corporation of India, Dunggripalli showing details of engagement of night-watchmen and casual labourers from 1974 to 31-12-1985. Ext. 1 also shows that the statement giving details particulars of the casual watchmen and casual labourers were submitted by the Asstt. Depot Suptd. to the District Manager, F.C.I. Titlagarh on 17-1-1986. In Ext. 1 the names of the second party members are found in Sl. No. 5, Sl. No. 3, Sl. No. 7 Serial No. 6, Serial No. 4 Serial No. 2 and Serial No. 1 respectively. Their dates of engagement have been noted in column 7 of the statement which ranges from May, 1974 to October, 1980. In column 11, it has mentioned that they are engaged as per sanction letters received from the district office. Column 12 mentions the justification of such engagement. Column 16 mentions that they were not surplus. Column 17 mentions that the casual workers Sri D. Pradhan, R. Rama Rao and K.S. Rao have been engaged since September, 1972, January, 1973 and May, 1973 respectively and some years they have worked for 240 days and even more continuously. Ext. 2 similarly shows that the workmen A. Bharsagar, D. Pradhan, G. Nayak, J. Singh and Sri K. S. Rao had been working from 1974 to 1985. The workman Sri R. Rama Rao worked from 1975 to 1985 and Sri T. Patel worked from 1980 to 1985. No contrary evidence has been adduced on behalf of the First Party-Management to show that these labourers did not work in the F.C.I. Dunggripalli for the period mentioned in Exts. 1 and 2 and that in the preceding 12 months before they were disengaged, they had not worked for 240 days.

In the circumstance, I have to accept the evidence adduced on behalf of the second party and hold that

they worked for many years in the F.C.I. Dunggripalli as casual labourers.

7. The attack of the Management that the second party members were not workmen within the meaning of Section 2(s) of the Industrial Disputes Act because they had been employed as casual labourers on 'no work, no pay basis' also does not appear to be acceptable.

Section 2(s) of the Industrial Disputes Act defines "workman" in the following manner :—

Section 2(s) : "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward whether the terms of employment be express, imported, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950, or as an Officer or employee of a prison; or
- (ii) who is employed in the police service or an officer or employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

It has been held consistently that the term workman" as defined in Section 2(s) of the Act is very wide and includes all persons who are employed in the industry including even an apprentice. Even a part-time employee is covered by this definition (See 1988 Lab. I.C. 505 Govindbhai Kanabhai Maru Vrs. N. K. Desai). Thus the above named workmen who served in the organisation of the First Party for long years, must be held to be 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act.

8. Issue No. 4.—Now coming to the question as to whether there has been termination of services of the second party workmen by the First party management, I may refer to parag. 10 of the written statement filed by the First party management in which they have stated that "The services of the casual watchmen were discontinued as per Headquarter Circular No. E-1(4)/85 dated 2-5-1986 and further the services of the second party members were no longer required as there was no work."

In paragraph-11 of the written statement of the First Party, it was stated that—"The question of retrenchment of the second party does not arise at all as the services of the casual workers were discontinued as per instruction of the headquarters of New Delhi and as there was no work the second party were not engaged further."

The case advanced in the written statement of the First Party as aforesaid clearly proves that the second party-workmen were disengaged by the First Party because they were found to be surplus and as such the action of the First Party amounted to bringing about retrenchment of the services of the second party.

In this connection I may refer to the decision of the Supreme Court of India in the case of State Bank of India Vrs. N. Sundara Money reported in (1976) 3 SCR 163 in which the meaning and import of the expression "retrenchment" was examined and it was observed :—

"A break-down of Section 2(00) unmistakably expands the semantics of retrenchment 'Termination.....for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart, the substance is decisive. Termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25-F and Section 2(00). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expensive definition. It means 'to end, conclude, cease'."

Thus in the light of the aforesaid decision I would hold that the second party-workmen were retrenched by the First Party-Management with effect from 1st June, 1986.

9. Issue No. 5.—Now coming to the question as to whether such termination of the services of the second party-workmen by way of retrenchment is legal and/or justified or not, as it seems, the First Party advanced a case in paragraph-13 of its written statement that the second party-workmen never worked continuously for 240 days during the preceding 12 months from the date of discontinuation of their work, obviously to keep out the provisions of Section 25-F of the Industrial Disputes Act from consideration. However, such stand seems to have been given up because neither W.W.1 was cross-examined on this question nor any suggestion was made to him that the second party-workmen did not work for the required period during the preceding 12 months from the date of their disengagement so as to attract the provisions of Section 25-F of the Industrial Disputes Act. W.W.1 proved copies of two lists Exts. 1 and 2 which were submitted by the Asst. Genl. Suptd. of the Food Corporation of India, Durgapalli showing engagement of the second party-workmen continuously for long years. The correctness of Exts. 1 and 2 have not been challenged by the First Party. The First Party also did not adduce any evidence in support of the case that the second party-workmen

having not served or the required period, section 25-F of the Industrial Disputes Act would not apply to them.

Admittedly, the conditions specified in Section 25-F of the Industrial Disputes Act for bringing about the termination of employment of a workman by an employer by way of retrenchment have not been complied by the First Party in respect of the second party-workmen. In the circumstance, it has got to be held that such termination of services of the second party-workmen by the First Party is illegal and unjustified.

10. Issue Nos. 1 and 6.—In view of the discussions made above, I would hold that the reference is maintainable.

Now coming to the question of relief to be granted to the second party-workmen, I would hold that the said workmen are entitled to the normal relief of reinstatement, with full back wages. If the First Party-Management finds that the second party members have become surplus because there is no work for them, they may bring about their retrenchment after following the appropriate procedure specified in Section 25-F of the Industrial Disputes Act.

11. The reference, accordingly, is answered as below:—

The action of the First Party-Management in terminating Sri K. S. Rao, Sri G. Nayak, Sri T. Patel, Sri R. Rama Rao, Sri J. Singh, Sri D. Pradhan and Sri A. Bharsagar from service with effect from 1st June, 1986 is illegal and unjustified. The above named workmen are entitled to reinstatement with full back wages.

S. K. MISRA, Presiding Officer
[No. L-42011/36/86-DJ(JC)(B)D, IV(B)]
R. K. GUPTA, Desk Officer

नई दिल्ली, 18 नवम्बर, 1988

का. प्र. 3576.—औद्योगिक विवादविचार, 1947 (1947 का 14) की धारा 17 के अन्तर्गत, केन्द्रीय सरकार, केन्द्रीय भारत कोकिंग कोल लि. का कूपा कोलिरी के प्रबन्धकों से सम्बन्धित विवादों और उनके श्रमिकों के बीच, अगस्त में निर्दिष्ट औद्योगिक विवादों केन्द्रित मजदूर औद्योगिक विवादों में, प्रबन्धकों के पंचायत को प्रकाशित करता है, जो कि 8-11-88 का प्रावधान हुआ था।

New Delhi, the 18th November, 1988

S.O. 3576.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. I Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Kuya Colliery of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on the 8th November, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)-
(d) of the Industrial Disputes Act, 1947.

Reference No. 39 of 1984

PARTIES :

Employers in relation to the management of
Kuya Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

APPEARANCES :

For the Employers : Shri G. Prasad Advocate.

For the Workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar. INDUSTRY : Coal.

Dated, the 14th October, 1988

AWARD

By Order No. L-20012(323)/83-D.III(A), dated, the 4th July, 1984, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the demand of Bihar Colliery Kamgar Union that the management of Kuya Colliery of M/s. Bharat Coking Coal Ltd. should regularise as employees of the colliery the workmen named in the Annexure below, with respective effect and other consequential benefits, is justified? If so, to what relief are these workmen entitled and from what date?"

ANNEXURE

1. Shri Fazuley Ansari.
2. Shri Bideshur Bhuiya.
3. Shri Pawan Modak.
4. Shri Gopal Mahato.
5. Shri Bokhara Bhuiya.
6. Shri Bhuneswar Rewani, and
7. Jaladhar Modak.

2. The case of the concerned workmen, as appearing from the written statement submitted by the sponsoring union, Bihar Colliery Kamgar Union, details apart, is as follows :

The concerned workmen have been working as underground mason and mason helper since long with unblemished record of service. They have been working regularly and continuously since 28-3-1982. Besides the job of mason the management were taking work from them which includes underground khamja cutting and line packing jobs. The jobs of mason, khamja cutting and line packing are permanent nature of job. Thus, they have been performing permanent nature of jobs which are essential for the purpose of running the mine. Each of them has put in more than 190/240 days of service in each calendar year. The management supplies all necessary implements, such as, jhora, belcha, gaita, drum, tina, cap-lamp, shoe, hat and belt to them. The management also supervise their job. The Wage Board Recommendations have been implemented by the management.

The job description and category of mason find place in Wage Board Recommendations. For all practical purposes the concerned workmen are employees of Kuya colliery. But the management with an ulterior motive to deprive the workmen have been disbursing their wages in the names of some intermediaries; rates of wages are also much below than those prescribed in N.C.W.A. II & III. The concerned workmen were being regularly engaged in incline Nos. 1, 7 and 12 and their attendances were regularly marked in Form 'C' register. They repeatedly represented before the management for regularisation and for payment as per N.C.W.A. II & III, but to no effect. Seeing the exploitation of the poor workmen the union raised an industrial dispute before the A.L.C.(C), Dhanbad, but the conciliation proceeding ended in a failure due to the adamant attitude of the management. The Government of India has referred the present dispute for adjudication. The action of the management in not regularising the concerned workmen as employees of the colliery is illegal, arbitrary and unjustified and also against the principle of natural justice. In the circumstances the union has prayed that the present reference be answered in favour of the workmen.

3. The management of Kuya colliery has submitted written statement. The case of the management, as appearing from the written statement, is as follows :

There exists no employer-employee relationship between the management of Kuya colliery and M/s. B.C.C.L. and persons named in the reference. These persons were employees of mason contractor, namely, Ram Chandra Singh. After coming into force of the Contract Labour (Regulation & Abolition) Act, 1970 any dispute with regard to contract Labour is required to be tackled only under the provisions of the said Act and not under the provisions of Industrial Disputes Act. Contract Labour (Regulation & Abolition) Act, 1970 has taken away the power of the Central Government, which it enjoyed previously under section 10 of the Industrial Disputes Act, to refer the dispute relating to Contract Labour to Industrial Tribunal. In this view of the matter the present reference is not maintainable. The Central Government, by notification dated 1-2-1975 which came into force on 15-2-1975 have prohibited employment in 5 items of work in a coal mine, but the Civil Engineering work is not covered by the notification. In the coal mine it becomes necessary occasionally to execute certain Civil Engineering jobs, such as, construction of ventilation, stoppings etc. These are works of very rare and irregular nature and of short duration; such jobs throughout the coal industry is entrusted to Civil Engineering Contractors, and in Kuya colliery as well the work was entrusted to Ram Chandra Singh. When Civil Engineering jobs are executed underground the mine and when the Contractor's workers have to go underground for performing civil engineering jobs they are provided with cap lamps, footwears, mine helmet for that particular days on which they go underground as per requirement of Coal Mines Regulations. Even a casual visitor or the Inspecting Staff of the Director General of Mines Safety have to be provided with these items when they go underground. Thus, mere issue of these items for the days concerned to any person does not transform him into an employee of coal

mine. One of the persons named in the reference was a mason and the others were mason mazdoors. They were contractor's workers and were exclusively engaged for underground masonry work. Most of the persons named in the reference work during the period from May 1982 to September 1982 and three of them worked for a maximum period of 9 days in November, 1982. The persons named in the reference worked underground for a total period of days as noted below :—

1. Gopal Mahato	.. 74 days
2. Jaladhar Modak	.. 65 days
3. Fazulus Ansari	.. 77 days
4. Pawan Modak	.. 70 days
5. Bideshwar Bhuiya	.. 65 days
6. Bokhra Bhuiya	.. 74 days
7. Bhuneshwar Rawani	.. 69 days

Attendance register showing the total number of days they had worked between May, 1982 and November, 1982 would be produced in due course of time. Anyway, these persons had never worked regularly or for 240 days in a year. The contractor himself supervised the work of these persons and they did not work under supervision, control and guidance of the management of the colliery. The mining sardars, overman and Asstt. Colliery Manager and others are concerned with the safety of the mines and production of coal. The contractor has to construct stoppings etc. as per specification given to him. He was given the particulars of the job required to be done and it was for him to get the same done as per required specification. The persons were entitled to wages fixed for Civil Engineering Works in coal mine and they are not covered by the N.C.W.A. nor are they entitled to get wages therefor. In the circumstances, the demand of the concerned persons for regularisation as employees of Kuya colliery with retrospective effect or prospective effect is not justified.

4. In answer to the written statement of the management the sponsoring union has submitted rejoinder to state that the action of the management in having the wages of the concerned workmen disbursed through Ram Chandra Singh, intermediary, is nothing but legal camouflaged. It has been asserted by the sponsoring union that the concerned workmen had been working in incline Nos. 1, 7, 12, 14, 21 ad'22, but the management have shown their attendances in respect of only one incline. The management is called upon to prove the attendance of the concerned workmen as asserted by them by producing attendance register. It has been further asserted that all of them have worked for more than 190/240 days in a calendar year. It has been pointed out that the concerned workmen claim for their regularisation and not for abolition of contract system.

5. In answer to the written statement of the sponsoring union the management has submitted rejoinder to state that the concerned persons are not employees of Kuya colliery and they were employees of Ram Chandra Singh, Contractor. Since they were not employees of M/s. B.C.C. Ltd. the question of their regularisation and payment as per N.C.W.A. II & III does not arise. It has been asserted that the present dispute is covered under the Contract Labour (Regulation and Abolition) Act, 1970.

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6. The sponsoring union has examined only one witness, namely, W.W. 1 Jaladhar Modak, one of the concerned workmen. It has laid no documentary evidence. On the other hand, the management has examined two witnesses, namely, M.W. 1 T. D. Roy, Manager and M.W. 2 S. P. Tekriwal Agent of Kuya colliery for sometime and laid in evidence a mass of documentary evidence which have been marked Exts. M-1 to M-4.

7. The case of the concerned workmen is that they were working as underground mason and mason helper since long in Kuya colliery and that they had been working as mason regularly and continuously since 28-3-1982 and that the jobs of underground khanja cutting and line packing were used to be taken from them by the management. In opposition to the claim of the concerned workmen the management has stated that there is no employer-employee relationship between the management of Kuya colliery of M/s. B.C.C. Ltd. and the concerned workmen and that they were the employees of a Mason contractor named Ram Chandra Singh. It has been asserted by the management that in coal mines it become necessary occasionally to execute certain civil engineering jobs like construction of ventilation, stoppings etc. and that these are works of very rate and irregular nature and of short duration and such jobs throughout the coal industry is entrusted to Civil Engineering Contractors and in Kuya colliery as well the work was entrusted to Ram Chandra Singh. It is the further case of the management that consequent upon coming into force of Contract Labour (Regulation & Abolition) Act, 1970, the Central Government, by notification dated 1-2-1975 which came into force on 15-2-1975 have prohibited employment in 5 items of work in a coal mine, but the civil engineering work is not covered under the said notification.

8. Sri G. Prasad, Advocate, for the management has contended that this reference is not maintainable since the Central Government has no authority to refer any dispute with regard to contractor's workmen for adjudication after the enactment of Contract Labour (Regulation & Abolition) Act, 1970. He has further contended that under Section 10 of the Contract Labour (Regulation & Abolition) Act regularisation of the concerned workmen is not possible in violation of that section.

Sri D. Mukherjee, authorised representative of the concerned workmen, has contended that the argument of Sri Prasad does not hold any water and is a meaningless exercise since the present dispute is for regularisation of the concerned workman and there is nothing in Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 to put an embargo on consideration of the question of regularisation of the concerned workmen by this Tribunal. He has further contended that the claim of the concerned workmen is not rooted in Contract Labour (Regulation & Abolition) Act and so this Tribunal has got jurisdiction to adjudicate the issue in controversy.

8. It appears that the Central Government, i.e., the appropriate Government referred the present dispute to this Tribunal for adjudication as to whether the demand of M/s. B.C.C. Ltd. for regularisation

of the concerned workmen as employees of the colliery with retrospective effect is justified or not. Hence, the main question is whether the demand of the sponsoring union for regularisation of the concerned workmen as employees of the colliery is justified or not. This demand has got nothing to do with the provisions of Contract Labour (Regularisation & Abolition) Act, 1970. As a matter of fact Section 10 of the said Act has not circumscribed or taken away the jurisdiction of this Tribunal to decide such matter. Section 10 provides that the appropriate Government may, after consultation with the Central Board or as the case may be, State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. There is no dispute that the concerned workmen were engaged in works pertaining to civil engineering and the management has admitted that this type of work has not been prohibited by the Central Government in terms of Section 10 of the Contract Labour (Regularisation & Abolition) Act, 1970. The Agent of Kuya colliery by letter dated 7-9-1983 informed the A.L.C.(C), Dhanbad-IV also that masonry work is not under the prohibited category of contract (Ext. M-3). This being the position, I have no hesitation to hold that the present dispute referred for adjudication by the appropriate Government may be decided and disposed of by this Tribunal.

9. The case of the sponsoring union is that the concerned workmen had been working as Mason and mason helper regularly and continuously in Kuya colliery since 28-3-1982 and that besides the job of mason the management used to take from them the job of underground khanja cutting and line packing. It has been asserted by the sponsoring union that the jobs of mason, khanja cutting and line packing are of permanent nature and that each of the concerned workmen had put in more than 190/240 days service in each calendar year. It has been alleged by the union that with an ulterior motive to deprive the poor workmen the management used to disburse their wages in the name of some intermediaries which is much below the rate of wages prescribed in N.C.W.A. II & III. The management has controverted this case by stating that the concerned workmen were employees of mason contractor Ram Chandra Singh and that in coal mines it became necessary to execute certain civil engineering job like construction of ventilation, stopping occasionally and that these are very rare and irregular in nature and of short duration and such jobs throughout the coal industry are entrusted to civil engineering contractors, and in Kuya colliery as well the work was entrusted to the aforesaid contractor. Thus, the position boils down, according to the case of the management, is that the concerned workmen are the workmen of the contractor Ram Chandra Singh. The provisions of Contract Labour (Regularisation & Abolition) Act, 1970 and the Rules framed thereunder provides for licensing of contractor working for the management. According to the management Ram Chandra Singh was a Contractor on Civil Engineering side and so the management is to prove that he was holding valid license therefor. MW-2 S. P. Tekriwal, who was posted as Agent of Kuya colliery from May, 1982 to May, 1984, has admitted in cross-examination that it is for the Agent of the colliery to obtain certificate of registration from A.L.C. for employment of contractor. But according

to him since Ram Chandra Singh was continuing from before he had no occasion to apply for registration. The witness could not remember if he checked registration certificate of Ram Chandra Singh. He is not in a position to say if the certificate of registration has been produced before this Tribunal or not. Thus, the evidence of this witness reveals that it is the duty of the Agent to obtain certificate of registration from the A.L.C. for registration of contractor and that he could not remember if he had checked the registration of Ram Chandra Singh. The management could not produce the license given to Ram Chandra Singh as contractor on the civil engineering side. The Madras High Court has held after consideration of the definition of workmen in the Industrial Disputes Act and also in the Contract Labour (Regulation and Abolition) Act, 1970 and the objects of the said Act that definition 'workman' implies that if the workman is not hired through a contractor holding a valid license under the Central Labour (Regulation and Abolition) Act, he would be a workman employed by the management itself. [1985(1) LLJ. 492]. Since in the present case the management could not produce the license of the contractor it follows that the workmen could not be contract labour within the meaning of Section 2(2)(b) of the said Act. The decision of the Madras High Court reported in 1985(I) LLJ. 492, highlights this position. This being so, the concerned workmen must be considered to be the workmen of the management of Kuya colliery.

10. I have already pointed out that it is the case of the concerned workmen that they had been working as underground mason and mason helper regularly and continuously since 28-3-1982 and that besides the jobs of mason, the management used to take from them the jobs of underground khanja cutting and line packing and that the jobs are of permanent in nature. It is the further case of the sponsoring union that each of the concerned workmen had put in 190/240 days of attendance in each calendar year, that the management use to supply all the implements, such as, jhora, belcha, gaita, drum, tina, cap-lamp, shoe, hat and belt to them and that the management supervised their job and that they were regularly engaged by the management in incline Nos. 1, 7, 12, 14, 21 and 22 and that their attendances were regularly marked in Form C register. In answer to this claim the management has stuck to the position that there was no employer-employee relationship between the management and the persons named in the reference and that one Ram Chandra Singh a mason contractor used to execute certain civil engineering jobs like construction of ventilation, stopping etc. which are of very rare and irregular nature and of short duration and that the concerned workmen were engaged by Ram Chandra Singh. It has been asserted by the management that the concerned workmen have not put in 190/240 days attendance in a calendar year and that Gopal Mahato, Jaladhar Modak, Fazulus Ansari, Pawan Modak, Bideshwar Bhuiya, Bokhra Bhuiya and Bhuneshwar Rawani worked for 74 days, 65 days, 77 days, 70 days, 65 days, 74 days and 69 days respectively during May, 1982 to September, 1982 and that the contractor himself used to supervise the work of these workmen and that they did not work under the control and guidance of the management of the

colliery. It has been asserted by the management that attendance register in respect of the concerned workmen showing the total number of days they worked during May, 1982 to November, 1982 will be produced in due course of time. WW-1 Jaladhar Modak is one of the concerned workmen. He has stated that they were working in Kuya colliery since 1982 and that one Bokheri Bhuia was working as mason while the rest of them were working as mason mazdoors. He has further asserted that all of them were deployed for duty underground and that in order to report for their duties they had to record their attendance in the Attendance Register kept in Form 'C' and in Cap Lamp Register for being furnished with cap lamp. He has further asserted that all of them had worked in nos. 1, 7, 12, 14, 21 and 22 inclines of the colliery. Working implements and materials, such as, belcha, gaita, jhora, drum etc. were used to be supplied by the management and that the contractor never accompanied them in underground and that the management's men used to supervise their work. Regarding the nature of duty performed by them, he has stated that in underground their work included isolation and stopping, khanja cutting, washing of roadway and line packing. He has stated that by khanja cutting process air ventilation is ensured and in doing so they had to cut coal and underground stone. He has asserted that the pattern of their job was of permanent nature and not temporary and that in other collieries permanent workmen perform these jobs. In cross-examination he has stated that initially they were men of Ram Chandra Singh, contractor, but in the next breath he has stated by mistake he has stated that they were labourers of Ram Chandra Singh. It was suggested to him that the work was to be performed for the management and so materials and working implements were used to be supplied by the management. He has stated that since March, 1987 they had been stopped for doing jobs by the management and that in every year they have put in 240 days of attendance. MW-1 T.D. Roy was posted at Kuya colliery in various capacities, namely, as Safety Officer, Manager (Opn) and ultimately as Manager. He has stated that ventilation, isolation, stopping, fitting of pumps etc. were used to be done departmentally and in exigencies by employing contractor and that departmental work was used to be done by departmental employees whereas the contractor used to employ his own workmen to execute the work entrusted to him. He has further stated that Ram Chandra Singh is one of such Contractor and that the workmen used to perform the job of ventilation, stopping isolation stopping etc. In cross-examination he had stated that there are five inclines in Kuya colliery, namely, Nos. 1, 7, 12, 14, 21 and 22. This is in conformity with the case of the sponsoring union that there exists five inclines in Kuya colliery. He has proved Cap Lamp Registers (Exts. M-1 to M-119) and has asserted that separate Cap Lamp Registers were not maintained for each incline; and that one centrally located Cap Lamp Room and an omnibus Cap Lamp Issue Register were maintained. He has also admitted in cross-examination that for isolation stopping workmen are required to cut khanja or recess and in order to perform their job they are required to cut coal. Since he has admitted that the concerned workmen used to do the job of isolation stopping and since he has admitted that the workmen are required

to cut khanja for isolation stopping and that in order to perform their job the workmen are required to cut coal also, it has been established by evidence that the concerned workmen not only perform the job of ventilation stopping but also isolation stopping which includes khanja cutting as claimed by the sponsoring union. MW-1 T. D. Roy has admitted in cross-examination that the management execute jobs of permanent nature by their permanent workmen. Earlier in his testimony he has stated that ventilation, isolation stopping, fitting of pumps were used to be done departmentally and in exigencies by employing contractor and that departmental work used to be done by departmental workmen whereas the contractor used to employ his own workmen to execute the work entrusted to him. It has been asserted by the sponsoring union that the jobs of mason, khanja cutting and line packing are of permanent in nature. In support of this fact WW-1 Jaladhar Modak has examined himself. The management has simply denied that the job of mason, khanja cutting and line packing are not permanent in nature. But they have not examined any witness to vouch for the fact. In the circumstances, I come to the conclusion that the concerned workmen were engaged in job of permanent nature when they were employed for the jobs of mason, khanja cutting and coal cutting.

11. It has been asserted by the sponsoring union that all the necessary implements, such as, jhora, belcha, gaita, drum, belt, cap lamp, shoe, hat etc. were used to be supplied by the management. In rejoinder, the management has denied this assertion. But WW-1 Jaladhar Modak has examined himself in support of the fact that the management used to provide them work tools and safety tools. Even MW-1 T. D. Roy has admitted that the work outfit and tools of the concerned workmen were used to be supplied by the management. This being so, I come to the conclusion that the concerned workmen were used to be provided with work tools and safety outfit by the management. It is the definite case of the sponsoring union that the work of the concerned workmen were used to be supervised by the management while the management has asserted that it was used to be supervised by the contractor. WW-1 Jaladhar Modak, one of the concerned workmen, has asserted in his evidence that the management used to supervise their work and that the contractor never accompanied them in the underground. MW-1 T. D. Roy has admitted that according to Coal Mines Regulations only competent persons are entitled to supervise the job of underground workers. Surely the contractor cannot be the competent person as per Coal Mines Regulation to supervise the job of underground workers as the concerned workmen were. That being so, the conclusion is reached that the jobs of the concerned workmen in underground were used to be supervised by the management. The sponsoring union has claimed that each of the concerned workmen worked for more than 190/240 days in a calendar year. The management has disputed this position. The witnesses for the management have stated that the concerned workmen did not work for 190/240 days in a calendar year. Personnel Manager, Bastacolla Area wrote to Sri S. K. Barityar, Dy. Personnel Manager (EJO), Koyla Bhawan on 12-5-1987 stating that none of the concerned workmen worked for 190/240 days but

much less as shown in his statement Ext. M-4). But attendances of the concerned workmen could have been verified from the Attendance Register kept in Form 'C'. In the written statement the management undertook to produce the Attendance Register in question. But they have not done so at the time of hearing even after the same were called for by the sponsoring union. No reason has been given for non-production of the documents. Thus action of the management lead to the only conclusion that had the Attendance Register been produced it would have reflected that the concerned workmen put in attendance for more than 190/240 days in a calendar year.

12. Thus, regard being had to the nature of work performed by the concerned workmen the supply of work tools and safety out-fit by the management and the supervision made also by the management and also the number of attendances put by them in each calendar year, I have no hesitation to hold that the demand of Bihar Colliery Kamgar Union for regularisation of these workmen listed in the annexure to the schedule of reference is justified. Since as per statement of W.W.1 Jaladhar Modak that they have been stopped from work from March, 1987 by the management of the colliery, I hold that they should be regularised in service as employees of the colliery from March, 1987 and paid back wages from the said period till date.

13. Accordingly, the following award is rendered—the demand of Bihar Colliery Kamgar Union for regularisation of the workmen listed in the reference is justified. The management is directed to regularise them in service from March, 1987 and to pay them back wages from March, 1987 till date.

In the circumstances, of the case I award no cost.

Sd/-

S. K. MITRA, Presiding Officer
[No. L-20012/323/83-D.III(A)/D.IV(A)]

का. भा. 3577.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, नई दिल्ली भारत कोकिंग कोल लि. का बरोरा कोलियरी के सम्बन्ध में सम्बन्ध विवादकों और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, सं. 1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-1988 को प्राप्त हुआ था।

S.O. 3577.—In pursuance of section 17 of the Industrial disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. I Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Barora Colliery of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on the 15th November, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act 1947.

Reference No. 27 of 1988

PARTIES :

Employers in relation to the management of
Barora Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen

APPEARANCES :

For the Employers.—Shri B Joshi, Advocate.

For the Workmen.—Shri D. Mukherjee, Secretary,
Bihar Colliery Kamgar Union.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 24th October, 1988

AWARD

By Order No. L-20012(192)/83-D.III(A) dated the 19th/20th December, 1983, the Central Government in the Ministry of Labour had, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, referred this dispute to Central Government Industrial Tribunal No. 3, Dhanbad for adjudication. Subsequently, by Order No. S-11025(7)/87-D.IV(B) dated 31st December, 1987/12th January, 1988 the Ministry of Labour has transferred this dispute to this Tribunal for adjudication. The schedule of the dispute runs as follows :

“Whether the management of Barora Colliery of Messrs Bharat Coking Coal Ltd., P.O. Nawagarh, District Dhanbad are justified in superannuating their workman Sri Ojha Mahato, Trammer, on and from 3rd May, 1983 ? If not, to what relief is this workman entitled ?”

2. The case of the management of Barora Colliery of M/s. B.C.C. Ltd., Dhanbad, as appearing from the written statement submitted, details apart, is as follows :

The present reference is not legally maintainable. The date of birth of the concerned workman has been recorded as 3-5-1923 in a statutory Form B Register. The Medical Board assessed his date of birth and the approximate age was determined. He was superannuated with effect from 4-5-1983 after attaining the age of superannuation at the age of 60 years. He authenticated the entries in the Form B Register after fully understanding the contents thereof. He was provided with an Identity Card which is a copy of Identity Card Register. He authenticated the said register in token of acceptance of the entries made therein. The Medical examination report was also authenticated by him. It is alleged that after superannuation he has raised this present dispute at the instigation of some interested person which is nothing but gambling in litigation. In the circumstances, the management has prayed that the action of the management in superannuating the concerned workman with effect from 4-5-1983 be held to be justified.

3. The written statement submitted by the sponsoring union, namely, Bihar Colliery Kamgar Union, Dhanbad, on behalf of the concerned workman, disclose the case of the concerned workmen as follows :

The concerned workman was working as permanent Trammer since long with unblemished record of service. He was an active member of Bihar Colliery Kamgar Union. The management illegally and arbitrarily superannuated him with effect from 3-5-1983. The actual date of birth of the concerned workman was 11-3-1936. In the Form B Register maintained by the erstwhile owner his date of birth was recorded as 11-3-1936. In Form 'A' maintained as per Provident Fund Act in the office of the Coal Mines Provident Fund office his date of birth has been recorded as 11-3-1936. The management illegally and arbitrarily changed his date of birth on the basis of report of so-called Medical Board and ultimately terminated his service with effect from 3-5-1983. He represented before the management several times against the illegal and arbitrary superannuation but without any effect. Seeing the adamant attitude of the management the union raised an industrial dispute before the Asstt. Labour Commissioner(C), Dhanbad which ended in a failure due to recalcitrant attitude of the management. In the circumstances, the appropriate Government referred the dispute for adjudication before this Tribunal.

4. In the rejoinder to the written statement of the sponsoring union, the management has denied the contentions of the sponsoring union about the age of the concerned workman and contended that large scale manipulation and fabrications in documents maintained in the C.M.P.F. office were carried on by interested parties in connivance with the staff and the C.M.P.F. Commissioner advised the management not to rely on the records of C.M.P.F. The management relies on the statutory document under the Mines Act for verification of the age.

5. In support of its action the management has examined two witnesses, namely, MW-1 Jagdish Prasad, Medical Officer and MW-2 M. K. Singh, staff working in Barora Area and laid in evidence the Medical Report and Form B Register which have been marked Exts. M-1, M-1|1 and M-2 respectively. On the other hand, the sponsoring union examined the concerned workman but laid no documentary evidence.

6. It is the emphatic case of the sponsoring union that the date of birth of the concerned workman was recorded in Form B Register by the erstwhile owner as 11-3-1936. It is the further case of the union that the concerned workman had worked as permanent Trammer since long. The necessary implication from these statements is that the concerned workman was employed in Barora Colliery as Trammer from the time of erstwhile private owner. The management has not specifically denied that the concerned workman was not inducted in service as Trammer from the time of erstwhile private owner. None of the wit-

nesses for the management has stated that the concerned workman joined the service of the colliery after it was taken over and subsequently nationalised. On the other hand, the concerned workman has stated on oath before me that he was appointed as Trammer in Barora Colliery by the erstwhile private owner. He has not been cross-examined on this point. In the circumstance, the conclusion is reached that the concerned workman was appointed as Trammer in Barora Colliery during the time it was under private ownership.

7. The union has asserted that the date of birth of the concerned workman was recorded as 11-3-1936 in Form B Register maintained by the erstwhile private employer. The present management is presumably the custodian of this Form B Register which was maintained by the erstwhile private employer. But this Form B Register has not been produced before me. The management has sought to justify its action of superannuating the concerned workman from service on the basis of Form B Register opened and maintained by it. This Form B Register has been marked Ext. M-2.

8. Shri B. Joshi, Advocate, for the management has contended that this Form B Register is a statutory document and hence the Tribunal ought to place reliance on it. Sri D. Mukherjee, Secretary of the sponsoring union has submitted that this is not statutory Form B Register and that the Tribunal should not place any reliance on it. In order to appreciate argument of the parties arrayed and to decide the matter it is necessary to consider the relevant provisions of the Mines Act which prescribes maintenance of Form B Register. The relevant portion of Section 48 of the Mines Act provides that for every mine there shall be kept in the prescribed form and place a register of all persons employed in the mine showing in respect of each such person—

- (a) the name of the employee with the name of his father or, of her husband, as the case may be, and such other particulars as may be necessary for purposes of identification;
- (b) the age and sex of the employee;
- (c) the nature of employment (whether above ground or below ground, and if above ground, whether in open-cast workings or otherwise) and the date of commencement thereof;
- (d) in the case of an adolescent, reference to the certificate of fitness granted under Section 40;
- (e) such other particulars as may be prescribed; and the relevant entries shall be authenticated by the signature or the thumb-impression of the person concerned.

The provisions of Section indicate that this Register should be prepared and maintained immediately upon induction of any person in the employment of mine. I have already stated that the concerned workman was employed in service as Trammer during the time

of erstwhile private owner. But this Form B Register has been prepared and is being maintained by M/s. B.C.C.L. after nationalisation of coal mines. As a matter of fact, MW-2 M. K. Singh has admitted in cross-examination that the Register Ext. M-2 was opened in 1973 and is continuing and that the age of the concerned workman was subsequently entered in the Register on the basis of his medical examination. Thus, it is evidenced that this Register is not a contemporaneous document and hence it has lost its force as a statutory register.

9. It is now necessary to consider this Register (Ext. M-2) along with other evidence on record both oral and documentary.

10. Sri B. Joshi, Advocate, for the management has contended that although the Form B Register (Ext. M-2) was opened and prepared in 1973, the concerned workman authenticated his date of birth recorded therein by putting his signature thereon. This contention is absolutely devoid of any force as emerging from evidence. MW-2 M.K. Singh has simply stated that the register bears the L.T.I. of the concerned workman and his photograph. But he has not vouched for the fact that the concerned workman put his signature on the register in authentication of the date of birth as recorded therein. On the other hand, the concerned workman has emphatically denied his thumb impression as appearing in Form B Register (Ext. M-2). The management has not spared any pain to have his thumb impression examined by an Expert to ascertain the fact whether it is his or not. That being so, I come to the conclusion that the contention of Sri B. Joshi has got no merit at all and must be over-ruled.

11. It appears from the evidence of MW-2 that the column meant for the age in Form B Register Ext. M-2) was not filed in as there was no material available. His evidence further discloses that the age of the concerned workman was subsequently entered in the Form B Register on the basis of his medical examination.

12. The management has not submitted any document to provide that the concerned workman was served with a notice to appear for medical examination for determination of his age. However, the fact is that the concerned workman underwent medical examination for determination of age by two doctors. The report of medical examination has been marked Ext. M-1 and M-1|1. The reports of the doctors disclose that the concerned workman disclosed his age as 40 years on 1-3-1977 when the medical examination was held. Strangely enough to state that both the doctors determined his age by appearance as 54 years and stuck to the position after having made some cursory on medical examination. M.W.1 Dr. Jagdish Prasad is one of the two doctors who examined the concerned workman medically for determination of his age. He has candidly stated that his report does not mention the basis on which the age of the concerned workman was determined. He has admitted in cross-examination that by examining third molar teeth age can be determined approximately, but he does not remember whether he examined molar teeth or not. Actually his report does not disclose that he examined

third molar teeth of the concerned workman. He has admitted that he does not know whether by ossification of pelvic bone the age of a person between 20 and 80 years can be determined. He has asserted that the concerned workman declared his age as 40 years on the date of medical examination. But the clinical examination did not favour the case of the concerned workman with regard to age disclosed by him. He has admitted that his report does not mention that any clinical examination was held. In the circumstances, I have no hesitation to hold that the doctors concerned made a show of medical examination for determining the age of the concerned workman.

13. Indeed, determination of age by Medical Expert cannot be absolutely accurate, but it may be near accurate and that is why opinion of Expert is obtained when there is no record of age or record of age is doubtful. It is the bounden duty of the Expert to determine the age after collecting duties with regard to :

- (i) general configuration and bodily development;
- (ii) lower jaw after examination;
- (iii) state of ossification of bones and epiphysis—diaphyseal union of long bones, and other datas of height and weight and some other signs.

14. The doctors who held the medical examination of the concerned workman did not spare any pain to collect these datas. Hence, the report of the doctors with regard to the age of the concerned workman is worthless and cannot be accepted. It is the firm case of the concerned workman that he disclosed his date of birth as 11-3-1936 in the Form B Register maintained by erstwhile employer. This Form B register has not been produced by the management although it is the custodian thereof. It is also the firm case of the concerned workman that in Form A maintained as per Provident Fund Act in the office of the Coal Mines Provident Fund his date of birth has been recorded as 11-3-1936. Although the sponsoring union tried to have Form 'A' produced before this Tribunal, nothing has come out of it. The concerned workman on oath has disclosed before me that his year of birth is 1936. But he could not produce any document in support of his claim. Nevertheless, I cannot accept his age or date of birth as determined by the management by appointment of Medical Board for the simple reason that the report of the Board is not scientific and worthy of credence as I have explained at length before.

15. In the circumstances the action of the management in superannuating the concerned workman on the basis of date of birth determined by such Medical Board cannot be held to be justified. Consequently, the concerned workman is entitled to be reinstated in service from the date of his superannuation i.e. with effect from 3-5-1983 and back wages. However, it will be open to the management, if it so desires and considers necessary, to hold a fresh enquiry about the correct date of birth of the concerned workman after giving him notice and opportunity for hearing and thereafter to retire him from service on the basis of the findings reached in the said enquiry.

16. Accordingly, the following award is rendered—the management to Barora Colliery of M/s. B.C.C. Ltd., Dhanbad is not justified in superannuating their workman Ojha Mahato, Trammer, on and from 3-5-1983. The management is directed to reinstate the concerned workman in service and to pay him back wages from 3-5-1983 till he resumes his duty for which he is to report within one month from the date of publication of the award. The management is, however, at liberty to retire him from service after determination of his age by holding an enquiry which includes his examination by a competent Medical Board. In the circumstances of the case I award no cost.

S. K. MITRA, Presiding Officer
[No. L-20012(92)/83-D.III(A)/D.IV(A)]

का. घा. 3578—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स ईस्टर्न कोलफील्ड्स लि. का हारिजाम कोलियरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-11-88 को प्राप्त हुआ था।

S.O. 3578.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Hariajam Colliery of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on the 7th November, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

REFERENCE NO. 132 OF 1985

In the matter of a reference under Section 10(1)(d) of the I.D. Act., 1947.

PARTIES :

Employers in relation to the management of Hariajam Colliery of Messrs. Eastern Coalfields Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen : Shri S. Bose, Secretary.
R.C.M.S., Dhanbad.

On behalf of the employers : Shri R. S. Murthy,
Advocate.

STATE : Bihar. INDUSTRY : Coal.

Dated, Dhanbad, the 31st October, 1988

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(115)/85-D.III(A), dated, the 28th August, 1985.

SCHEDULE

"Whether the demand of Rashtriya Colliery Mazdoor Sangh that Shri P. L. Tripathy, Clerk, Hariajam Colliery of M/s. Eastern Coalfields Limited, P.O. Nirshachatti, Distt. Dhanbad, should be placed in Clerical Grade-1 from the year 1974 and given subsequent promotion is justified? If so, to what relief the workman is entitled and from what date?"

In this reference both the parties made their appearance and filed their respective W. S. documents etc. Thereafter the case proceeded along with its course. Ultimately when the case was fixed for evidence both the appeared before me and filed a Joint Compromise petition. I heard the parties on the said Joint compromise petition and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly, I accept the same and pass an Award in terms of the Joint compromise petition which forms part of the Award as Annexure.

Sd/-

I. N. SINHA, Presiding Officer.
[No. L-20012(115)/85-D.III(A)/D.IV(A)]
K. J. DYVA PRASAD, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 DHANBAD IN THE MATTER OF REFERENCE NO. 132 OF 1985

PARTIES :

Employers in relation to the Management of Hariajam Colliery of M/s. Eastern Coalfields Ltd., P.O. Nirshachatti, District Dhanbad.

AND

Their Workmen

JOINT COMPROMISE PETITION OF THE EMPLOYERS & WORKMAN

The above mentioned employers and workman most respectfully beg to submit jointly as follows :

1. That the employers and workman have jointly negotiated the matter covered by the above reference with a view to arriving at an amicable and mutually acceptable settlement.
2. That as a result of such negotiations, the employers and the workman have mutually arrived at a settlement of the matter on an overall basis on the following terms and conditions :

- (a) It is agreed that Shri P. L. Tripathi the workman concerned will be placed in Clerical Grade-1 with effect from 28-8-1985 which is the date of order of reference of their case for adjudication by this Hon'ble Tribunal.

- (b) It is agreed that the pay of the concerned workman Shri P. L. Tripathi will be fixed in the post of Clerk, Gr-I with effect from 28-8-1985 according to the rules of the Management and he will be paid wages in Clerical Gr. I accordingly, as from the said date, i.e. he will be paid difference of wages between Clerical Gr. II and Clerical Gr. I from 28-8-1985 to 31-10-1988 and from 1st November, 1988 he will be regularise paid wages in Clerical Gr. I from 01-11-1988 based on the fixation of his pay with effect from 28-8-1985 and by allowing him annual increments with effect from 28-8-1986 and 28-8-1987.
- (c) It is agreed that the seniority of Shri P. L. Tripathi in the post of Clerk Gr. I will be reckoned with effect from 28-8-1985.
- (d) It is agreed that this is an overall settlement in respect of all the claims of the workman concerned and the sponsoring union arising out of the above reference.
- (e) It is agreed that date of initial appointment of Shri P. L. Tripathi will be treated as 26-2-1952.
3. That the employers and workman jointly declare and confirm hereby that they consider the aforesaid terms of settlement as just, fair and reasonable to both the parties.

In view of the above, the employers and the workman jointly pray that the Hon'ble Tribunal may be pleased to accept the aforesaid agreement/settlement and dispose of the reference accordingly in terms thereof and give an award.

Sd/-

(Shankar Bose)

Secretary

Rashtriya Colliery Mazdoor Sangh
for & on behalf of Workman.

Sd/-

(P. L. Tripathi)

Workman Concerned.

Sd/-

(R. Daman)

Dy. CME/Agent

Hariajam Colliery

for & on behalf of the employer.

Sd/-

(S. P. Singh)

Dy. C.P.M., Nirsha Area (EC Ltd.)

for & on behalf of the employer.

Sd/-

(Raj. S. Murthy)

Advocate for Employer.

Witness :

1. K. K. Singh.

2. R. S. Sharma.

Dated this the 14th day of October, 1988.